

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**  
**ORIGINAL**

Title: Public Meeting to Discuss the Hearing Process  
for Judging the Safety of a Potential High-  
Level Waste Repository

Docket Number: (not applicable)

Location: Las Vegas, Nevada

Date: Wednesday, May 23, 2001

Work Order No.: NRC-221

Pages 1-139

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NUCLEAR REGULATORY COMMISSION

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PUBLIC MEETING TO DISCUSS THE HEARING  
PROCESS FOR JUDGING THE SAFETY OF A  
POTENTIAL HIGH-LEVEL WASTE REPOSITORY

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WEDNESDAY,

MAY 23, 2001

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LAS VEGAS, NEVADA

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The Public Meeting convened at the  
Regional Transportation Commission Building, 600 South  
Grand Central Parkway, Las Vegas, Nevada, at  
1:00 p.m., F.X. "Chip" Cameron, Facilitator,  
presiding.

PRESENT:

F.X. "CHIP" CAMERON

C. WILLIAM REAMER

LAWRENCE J. CHANDLER

DENNIS C. DAMBLY

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## I N D E X

	<u>AGENDA ITEM</u>	<u>PAGE</u>
1		
2		
3	Welcome: Meeting Objectives and Format	3
4	Introduction: The Hearing as Part of	8
5	NRC's Licensing Process	
6	Overview of the Hearing Process: Public	44
7	Opportunities and Schedules	
8	Steps in the Hearing Process for a	80
9	Potential Repository:	
10	Pre-License Application Phase	84
11	Pre-Hearing Activities	89
12	Evidentiary Hearing	101
13	Appeals	105
14	Closing Remarks	138

15

16

17

18

19

20

21

22

23

24

25

## P-R-O-C-E-E-D-I-N-G-S

(1:05 p.m.)

MR. CAMERON: My name is Chip Cameron, and I'm the Special Counsel for Public Liaison at the Nuclear Regulatory Commission. I would like to welcome you to the NRC's public information meeting on the NRC hearing process for a potential DOE license application for a high-level waste repository at Yucca Mountain.

It's my pleasure to serve as your facilitator for today's meeting, and I would like to cover three items briefly with you before we go into the substance of today's discussion.

I'd like to talk a little bit about objectives for the meeting; secondly, go over format of the meeting and ground rules for the meeting.

MR. MCGOWAN: (Inaudible comment from an unmixed location.)

MR. CAMERON: We will, Mr. McGowan. We'll get to that.

We'll get to the introduction after I do the third part, which is an agenda overview for all of you. I'll introduce my colleagues up here.

In terms of objectives for today's meeting, we want to provide you with information and

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1 answer your questions on the process that the NRC will  
2 use for making a decision on a license application  
3 that DOE may submit for the repository.

4 The hearing process is also known as the  
5 licensing proceeding, and it is just one of many NRC  
6 responsibilities in regard to the review of DOE  
7 activities at the repository. But it's a very  
8 important one in that this is where the initial NRC  
9 decision will be made on whether to grant or deny or  
10 somehow condition the DOE license application.

11 We're here today in response to requests  
12 from the public that we do a meeting on this  
13 particular subject, so that you can understand the  
14 hearing process and how you might want to participate  
15 in that process.

16 In terms of format and ground rules, we're  
17 going to have some brief presentations by the NRC  
18 staff, and after each of those presentations we're  
19 going to go out to you for questions and comments. If  
20 you do have a question, just signal me, and I'll bring  
21 you this talking stick.

22 We are taking a transcript of today's  
23 meeting, and that transcript will be available for  
24 review for anybody who wants to take a look at it.

25 When you do speak, please identify

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1 yourself and give us an affiliation, if appropriate.  
2 I would just ask that one person speak at a time, so  
3 that we can get a clean transcript, and, more  
4 importantly, so that we can give our attention to  
5 whomever has the floor at the moment.

6 Please try to be concise in your questions  
7 and comments. I want to make sure that everybody who  
8 wants to talk today gets an opportunity to do that.  
9 That means we may have to ask you to just wrap up your  
10 question or your comment, so that we can move on to  
11 other people in the audience.

12 I wanted to make a couple of points on  
13 relevance of comments today. Not all of your  
14 questions and comments may fit neatly under the agenda  
15 topic that we're on at the time. So that if we do get  
16 something that fits better later on in the program,  
17 I'll make a note of that up here, so that we will be  
18 sure to come back to that question and not lose it.

19 The second aspect of relevance that I'd  
20 like to talk about is that we know that there's a lot  
21 of concerns, a lot of questions, about various aspects  
22 of the repository. And the NRC is always willing to  
23 listen to people and to try to provide the information  
24 on our responsibilities.

25 Today we really do want to focus on what's

1 known as the hearing process, and we need to keep our  
2 focus there. If there are other types of questions or  
3 issues, we'll try to address those with you at the  
4 break that we're going to have or at the end of the  
5 meeting.

6 In terms of the agenda today we're going  
7 to start out with Mr. Bill Reamer, who is right over  
8 here closest to all of you. And Bill is the Branch  
9 Chief of the High-Level Waste Branch in the Office of  
10 Nuclear Materials Safety and Safeguards at the NRC.  
11 And his branch is the branch, the people who work for  
12 Bill, for evaluating DOE work on the responsibility.

13 And he's going to talk to you about NRC  
14 responsibilities in general, in regard to the  
15 repository, and try to place this hearing process  
16 aspect into context for you, so you understand how all  
17 of that fits in.

18 We'll then go to questions and answers  
19 from Bill, and then we're going to go to Mr. Lawrence  
20 Chandler, who is right over here. And Larry is the  
21 Associate General Counsel for Hearings, Enforcement  
22 and Administration at the NRC in the NRC's Office of  
23 General Counsel. And the people who work for Larry  
24 are the attorneys who are going to be representing the  
25 NRC staff in the hearing process, and Larry is going

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1 to give you an overview of the hearing process.

2 We'll then take some questions and answers  
3 at that point on overview issues. We'll take a short  
4 break, and then we're going to go to Mr. Dennis  
5 Dambly. And Dennis is the Assistant General Counsel  
6 for Materials, Litigation and Enforcement, again in  
7 the Office of General Counsel at the NRC.

8 And Dennis supervises the attorneys who  
9 will be representing the NRC staff in the hearing  
10 process in terms of hierarchy. Dennis is one of the  
11 Assistant General Counsels that work for Larry at the  
12 NRC.

13 I would thank all of you for being here  
14 today. And my job as a facilitator is to try to make  
15 sure that the information provided by the NRC is  
16 clear, to make sure that everybody has a chance to  
17 speak, to keep us organized and relevant.

18 And if there are items that we need to get  
19 back to you on, questions that we don't answer today,  
20 I will keep track of those again over on that flip  
21 chart, so that we don't lose sight of those when we  
22 leave the meeting, so that we will get back to you on  
23 those particular items.

24 I'm now going to ask Mr. Bill Reamer to  
25 give us the overview context on the NRC

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1. responsibilities. Bill?

2. MR. REAMER: Thank you, Chip.

3. Thanks for coming. My name is Bill  
4. Reamer. I'm Chief of the High-Level Waste Branch at  
5. the Nuclear Regulatory Commission. I think I have  
6. introduced myself to most of you. I recognize a lot  
7. of your faces also from prior meetings. I'm glad to  
8. see you. Thanks for coming.

9. The meeting that we're holding today is a  
10. direct result of prior meetings that we've held where  
11. we have described our role, what we do, and what we  
12. would be responsible -- can you hear me all right?  
13. Not so great. Okay.

14. What we would be responsible to do if  
15. there were a license application filed by the  
16. Department of Energy. We had a question, "Could you  
17. come back and describe the licensing process?" And so  
18. it's really that request that we're responding to  
19. today.

20. We were here a year ago in May and started  
21. our description of that, held a meeting. I think some  
22. of you probably attending that meeting. The meeting  
23. today is to address a specific aspect of the licensing  
24. process, and that's our hearing process, in which  
25. public participation can occur.

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1           The context that Chip talked about and the  
2 context that I'll describe before we get into the  
3 details of the NRC hearing process is, really, who is  
4 the NRC? We're an independent regulatory agency. We  
5 have responsibility, really, only to protect the  
6 public health and safety.

7           We have no responsibility to promote or  
8 develop nuclear power or to develop a waste disposal  
9 site anywhere. Our sole responsibility is to regulate  
10 it and regulate it to protect the people in this room.

11          We regulate other nuclear projects. We  
12 regulate 100-plus nuclear powerplants that are in the  
13 United States. We know how to regulate nuclear  
14 facilities, and we will bring that expertise to this  
15 project if there is a repository at Yucca Mountain.

16          Our responsibility, as set by Congress,  
17 with respect to high-level waste disposal is that we  
18 are supposed to regulate the Department of Energy in  
19 this area.

20          Now, the NRC -- head of the NRC, our five  
21 Commissioners, they are appointed by the President.  
22 They are appointed for fixed terms. They are  
23 independent of the President. That is to say that the  
24 President can't remove them, because he's unhappy with  
25 a decision that they make. So the process has been

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1 specifically set up, so that they can make the correct  
2 decision based on the facts.

3 The law requires that the political  
4 affiliations of those Commissioners be balanced, and  
5 they come from a variety of accomplished walks of  
6 life. They include attorneys, nuclear engineers, a  
7 former state regulator who was experienced with  
8 regulating nuclear materials.

9 The five Commissioners are supported by a  
10 technical staff of approximately 2,000. The group  
11 that's here today from NRC -- myself and the other  
12 people that you will be hearing from -- are part of  
13 the technical staff. The attorneys who will be  
14 describing the licensing process, Larry and Dennis,  
15 are attorneys that represent the technical staff and  
16 support us.

17 We recommend to the Commission health and  
18 safety regulations. Our responsibility is to evaluate  
19 the technical merit of any license application that's  
20 received by the agency, and we advise the Commission  
21 on health and safety issues, and we interact with the  
22 public as we are doing today and will continue to do  
23 if this project goes forward.

24 The technical staff is made up of a number  
25 of scientists and engineers. Specifically, with

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1 respect to a possible high-level waste repository,  
2 there are approximately 35 of us who have a variety of  
3 technical backgrounds. We're supported by an  
4 independent contractor located in Texas that would  
5 bring to bear another staff of approximately 45  
6 individuals.

7 The particular technical disciplines that  
8 we have cover the waterfront of potential technical  
9 issues in this project. They range from waterflow  
10 into a potential repository; the possibility of  
11 destructive events, such as earthquakes or volcanic  
12 activity; health physics people who understand how to  
13 analyze radioactive materials effects on people;  
14 attorneys, including the folks who will be talking to  
15 you today; inspectors, people who know how to assure  
16 compliance with regulations, to identify  
17 noncompliances and follow up on those, because if this  
18 project goes forward we will treat it like any project  
19 that we work on. We'll expect the Department of  
20 Energy to comply with the regulations we set, and  
21 we'll penalize them if they don't.

22 In addition, we have technical facilities  
23 to do our own and independent work, laboratories in  
24 San Antonio that can conduct tests and build our own  
25 experience and knowledge base that we can bring to

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1 bear, so that we can ask the right questions of the  
2 Department of Energy.

3 We have inspectors. We have people who  
4 are located in Las Vegas full-time. There are three  
5 on-site representatives and a fourth individual in  
6 that office. I think they're all here today. If you  
7 have questions after this meeting, I urge you to  
8 follow up with them. Their mission is to be  
9 responsive to your concerns. If they can't answer  
10 your questions, they will get answers for you.

11 With respect specifically to a possible  
12 repository, the law does define NRC's  
13 responsibilities, and they are to set regulations that  
14 are protective of people who potentially could be  
15 affected by the repository. Those regulations have to  
16 be consistent with standards that will be prescribed  
17 by the Environmental Protection Agency. That's right  
18 in the law.

19 In addition, if there is a license  
20 application that's filed with us, our responsibility  
21 is to make a decision on whether to permit  
22 construction, and, if a facility is constructed, to  
23 make a decision again later whether to permit waste to  
24 come to this site.

25 And as I mentioned earlier, it's clear we

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1 have the responsibility and will carry out the  
2 responsibility to assure that DCE obeys our rules.

3 I've said this -- how we will carry out  
4 this role a number of times before, and it's important  
5 enough to continue to repeat. But we will do this --  
6 we will carry out our role by reviewing all of the  
7 information, making decisions that are open,  
8 accessible, and based on the facts.

9 We'll use what I call a step-wise  
10 approach. We'll first consider, if there is a license  
11 application, whether there's enough information to  
12 permit construction. And only after construction is  
13 substantially complete and all of the information in  
14 the license application is properly updated would we  
15 then consider whether waste should come to the site.

16 Each of these decisions in the process  
17 should be reversible, so that if the decision is made  
18 later that this project should not go forward, it  
19 won't go forward. And as I have said before, we want  
20 to do this in a way that maintains open access to  
21 everyone who is potentially affected.

22 The law says that we are to make a  
23 decision on the license application within three years  
24 of the submittal, and it also provides that in doing  
25 that we are to provide the opportunity for a full and

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1 fair hearing. And so at today's meeting we'll be  
2 talking principally about that.

3 But I want to emphasize that before any  
4 hearing could occur, before any licensing review would  
5 take place, there are a number of steps that this  
6 project needs to go through. The Department of Energy  
7 needs to finish the scientific work that it's doing  
8 and the analysis work that it's doing right now, and  
9 then make a decision on whether to recommend the site.

10 If that decision is to recommend the site,  
11 the President needs to, under the law, decide whether  
12 he will approve that recommendation. The State of  
13 Nevada is given the authority if that -- if the  
14 President approves the recommendation, to file a  
15 notice disapproving the site.

16 If that notice of disapproval is filed,  
17 Congress then reviews the project and must decide  
18 whether to approve or not approve the Department of  
19 Energy's site recommendation. All of these steps have  
20 to occur and be completed before the Department of  
21 Energy has authority to submit a license application  
22 to the NRC.

23 If a license application is submitted, the  
24 first step that we will take is to conduct a review of  
25 the application for thoroughness. It's called an

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1 acceptance review, and our objective will be to  
2 consider whether all of the information that our  
3 regulations require are included in that application.  
4 If the application is incomplete, we will return it to  
5 DOE, and we will not start the three-year clock to  
6 complete our safety review.

7 If the application is complete, we will  
8 then accept the application and docket it and move to  
9 the next step of our review. That next step includes  
10 a review of the Department of Energy final  
11 environmental impact statement, which by law must  
12 accompany the license application.

13 We will review that from the standpoint of  
14 whether it is practical for the NRC to adopt the EIS,  
15 and we'll make that determination as a result of that  
16 environmental review.

17 In addition, we will commence a detailed  
18 safety review of the license application. If we need  
19 more information from the Department of Energy, we  
20 have the authority to require that. We also have the  
21 capability to conduct our own independent analyses to  
22 confirm or disconfirm the calculations, the  
23 information that's in the Department of Energy license  
24 application, and we will document the results of our  
25 review in a public report called the Safety Evaluation

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1 Report.

2 There are three potential outcomes of our  
3 review. One outcome is that we would deny the  
4 application if DOE does not demonstrate safety in the  
5 repository. Another potential outcome is that we  
6 could grant the application and permit construction to  
7 go forward, or we could grant the application with  
8 conditions, which we would have to agree to before it  
9 could move forward.

10 So that is the gist of the NRC role in the  
11 licensing process that sets the context for what we  
12 will be talking about today. As I said, any decision  
13 on a license application has to be based on a full and  
14 fair public hearing. And I think as you will hear in  
15 the meeting as it progresses, if that hearing occurs  
16 it would follow well-established rules and lead to, we  
17 believe, an open, objective decision.

18 So, Chip, maybe at this point we can break  
19 for questions.

20 MR. CAMERON: Okay. Let's go out for  
21 questions for Bill on his presentation, and we'll go  
22 to -- right here to Judy, and then we'll come back up  
23 here. And just remember to identify yourself.

24 MS. TREICHEL: Judy Treichel, NNWTF. I  
25 just had two on some of the stuff that you directly

1 said. You said that construction had to be  
2 substantially complete before you could go on to the  
3 next phase of the license, which would be to operate  
4 a repository. What does "substantially complete"  
5 mean?

6 MR. REAMER: Well, I think "substantially  
7 complete" means that all of the facilities that are  
8 needed to safely handle the material that comes to the  
9 site, to move it to its -- to place it in a repository  
10 -- all of those facilities, as a minimum, need to be  
11 done and done in conformance with the design and the  
12 NRC authorization.

13 MS. TREICHEL: Okay. So they have said  
14 that they intend to build about 10 percent of the  
15 underground and start placing waste in the building as  
16 they go. So it didn't sound substantial.

17 The other question was that you said that  
18 they must comply with all of your rules. Do you -- I  
19 know that DOE has to prove to you that they can do a  
20 safe repository. Are you able to prove to us that if  
21 Yucca Mountain was sort of partially loaded and you  
22 decided that they weren't doing it right, that you  
23 could shut that down?

24 With a reactor you can force a shutdown.  
25 Can you shut down a repository with waste arriving and

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1 waste in place? And is it possible for you to do  
2 that, so that we know that there is a heavy hammer you  
3 can use on this?

4 MR. REAMER: There's a requirement in the  
5 proposed regulation that the placement of waste be  
6 reversal. And that requirement has to be demonstrated  
7 to be effective. If the law requires reversibility,  
8 and there is no demonstrated conceptual way to do  
9 that, I don't see how the repository can go forward.

10 MR. CAMERON: Okay. Thank you. Let's go  
11 to this gentleman right here. Yes, sir.

12 MR. PERNA: My name is Frank Perna. I'm  
13 a citizen activist. I'm with Bechtel. They had a --  
14 they put up their goals, and one of their goals is --  
15 they were talking about, you know, waste storage  
16 packages. Thunderbolt is a long isolation period  
17 followed by a controlled slow release. Now, they  
18 didn't put any time on this.

19 Since we're talking about 10,000 years,  
20 I'd like to know how long the isolation period is.  
21 And the slow -- this controlled slow release, do they  
22 mean that the waste package is going to fail? It  
23 certainly sounds like that. Otherwise, they're going  
24 to put it in the mountain, wait a while, and then it's  
25 going to fail. They didn't put any time on that, and

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1 I couldn't wait for a meeting that was going to last  
2 several hours.

3 Another question I have is there is no  
4 complete environmental impact statement. So we don't  
5 know what roles they're going to take, or do we? And  
6 we don't know where they're going to bring the rail  
7 in, since it ends at Caliente, and there's no rail to  
8 Yucca Mountain.

9 So, I mean, we really don't know anything,  
10 and now I assume they don't either, since there's no  
11 environmental impact statement.

12 Now, there's also the five NRC  
13 Commissioners. Are you talking about Republicans or  
14 Democrats? What about the smaller parties in this  
15 country? Is there any representation of the smaller  
16 parties? I'd like to see Ralph Nader take --

17 (Laughter.)

18 I think he would be a very good  
19 Commissioner.

20 Okay. Now, Senator Reed sent questions I  
21 guess -- I assume -- I'm not sure if it was to the NRC  
22 or to the DOE. There was an experiment where they  
23 sealed off part of the tunnel, and their stated  
24 objectives were to put the mountain back in the  
25 position it was in before they built the tunnel.

1           And their problem is that it's loaded with  
2 humidity, condensation. In fact, it's so humid, and  
3 it condenses on the walls, or wherever.

4           Well, this experiment failed. There are  
5 two or three explanations why. The first one was it  
6 failed because their circuit breakers were tripped,  
7 and then they went on battery backup. And then the  
8 experiment stopped -- or it failed before they got all  
9 of the information.

10          Well, their second explanation -- what had  
11 happened -- the second explanation was before they  
12 sealed the tunnel, someone turned the switch, and  
13 that's why they didn't have the full information.  
14 Well, I suggest that if someone can trip a switch, and  
15 no one has checked the continuity to the meters, or to  
16 the whole experiment, it's in progress.

17          But now the third one is Senator Reed's  
18 question here -- we have determined that moisture was  
19 not the cause of the power loss and subsequent data  
20 loss. In October 2000, we suspected the power loss  
21 was caused by high humidity conditions and tripping of  
22 the ground fault interrupter breakers.

23          MR. CAMERON: Sir, could you hold for a  
24 second right now? Let me tell you why. I think Bill  
25 will be -- we do want to focus on hearing process

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1 issues today, and that doesn't minimize the importance  
2 of your questions.

3 I think that what I would like to do is  
4 ask Bill to address the NRC Commissioner's question.  
5 And also, if you could talk about the NRC's role in  
6 regard to the environmental impact statement, and that  
7 may help answer some of the gentleman's questions  
8 about that.

9 And I guess I would ask on your two  
10 technical questions -- the humidity and Senator Reed's  
11 questions -- and also on the first point that you  
12 raised, if NRC staff could talk to this gentleman at  
13 the break and make sure that we answer this.

14 So we're going to go with two answers to  
15 those questions, but thank you, sir.

16 MR. PERNA: Thank you.

17 MR. REAMER: And, specifically, Chad  
18 Glenn, who is sitting behind you and a little bit to  
19 your left, can talk about the humidity question. He's  
20 quite familiar with the points that you're raising.  
21 I'm aware in general of what you're raising and have  
22 similar concerns to what you've stated.

23 The President decides who is on the  
24 Commission. He has the authority to appoint, and so  
25 he decides the political affiliations of the people

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1 that can be appointed. And the nominees have to be  
2 confirmed by the Senate as well, so they are  
3 Presidential appointees subject to advice and  
4 confirmation of the Senate. That's kind of the best  
5 I can say about the political affiliations.

6 I respect your point of view that there  
7 should be a strong independent view. Because we are  
8 an independent regulatory agency, we should be making  
9 decisions based on a technical past, not based on the  
10 political affiliations of the people. And our  
11 commitment of the technical staff is to make the  
12 independent decision.

13 The final environmental impact statement  
14 is really in the Department of Energy's court at this  
15 point. They have to finalize the environmental impact  
16 statement before they go forward with any site  
17 recommendation decision, and that environmental impact  
18 statement has to meet the requirements of the law,  
19 including the National Environmental Policy Act.

20 And there were many comments that were  
21 filed, I think on the order of thousands of comments  
22 that were filed, and the law requires that those be  
23 responded to by the Department of Energy in a  
24 transparent way that we can see.

25 When the NRC looks at the environmental

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1 impact statement if this project goes forward, we are  
2 going to be concerned whether there is new information  
3 that's not included in the EIS, that has important  
4 environmental -- potential environmental impacts, or  
5 whether what's been analyzed in the environmental  
6 impact statement is in some way significantly  
7 different than what DOE is now proposing to -- would  
8 then be proposing to the NRC to be licensed.

9 MR. CAMERON: Okay. We're going to go  
10 right here, and then we're going to come back up to  
11 Mr. McGowan. Yes?

12 MS. ALICE: Laurie Alice, Nevada, from the  
13 General's Office. On the issue of the EIS, since we  
14 -- there seems to be a rather fuzzy line between  
15 substantive technical questions and the process. And  
16 I think sometimes there's an overlap.

17 But on the issue of EIS, if the NRC does  
18 determine that it's inadequate or, as you say, does  
19 not address certain key safety concerns, it was my  
20 understanding based on an earlier meeting with the NRC  
21 that you would do a supplemental EIS.

22 MR. REAMER: If the outcome of the review  
23 is that there is a gap in the coverage of the EIS as  
24 you've posited, then a supplemental needs to be done.  
25 At this point, not knowing the specific way in which

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1 there might be problem, I can't say it would be the  
2 NRC that would do the supplement. It's conceivable  
3 that we would tell DOE to do the supplement.

4 MS. ALICE: Now, just at the risk of  
5 coming dangerously close to a substantive or technical  
6 issue, how is the NRC going to address the  
7 transportation issue?

8 MR. REAMER: Well, the same question would  
9 be presented. Is there new information on  
10 transportation that is not included in the Department  
11 of Energy EIS?

12 MS. ALICE: I think it's quite obvious.  
13 We think it's not addressed at all.

14 MR. REAMER: Yes. Right.

15 MS. ALICE: So we would say that is  
16 absolutely deficient in that respect.

17 MR. REAMER: And so the NRC staff would  
18 take their own look and reach a conclusion. And then,  
19 if there is a proceeding and the State of Nevada is a  
20 party, they could present their position in that  
21 hearing, in that licensing proceeding, and the Board  
22 would decide whether the EIS needs to be supplemented  
23 or not.

24 MS. ALICE: Am I to understand that the  
25 NRC has not decided whether they will address or not

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1. the issue of transportation?

2. MR. REAMER: We really can't make a  
3. decision until the final environmental impact  
4. statement is issued. And then, of course, that EIS,  
5. which must comply with NEPA, would be subject to  
6. review in the courts.

7. MS. ALICE: But you're not really being  
8. responsive to the issue of whether transportation is  
9. a key concern.

10. MR. REAMER: It clearly was a concern in  
11. our comments.

12. MS. ALICE: Okay.

13. MR. REAMER: Yes.

14. MR. CAMERON: Okay. We have a number of  
15. questions here, and I'm trying to keep track of all of  
16. them. We're going to go to Mr. McGowan.

17. And if you have a question about how a  
18. particular issue is going to be addressed in the  
19. process, that is fair game.

20. Mr. McGowan?

21. MR. MCGOWAN: Thank you, sir.

22. Tom McGowan, Las Vegas resident. I want  
23. to what extent of public comment will be allowed at  
24. the pre-decision stage, and, if not, why not? I have  
25. a footnote to this. Do you mind if I smoke?

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1 MR. CAMERON: There is no smoking in here.

2 MR. MCGOWAN: Well, thank you very, very  
3 much. You've just set the official NRC standard for  
4 the release of toxic contaminants into the human-  
5 accessible environment, which is none, zero, nil. You  
6 figure out how to do that. But I'm here to see why  
7 you're here, very frankly.

8 If you call this the meeting to address  
9 the safety of a potential repository, I think you  
10 might want to revise that to read the potential safety  
11 or non-safety of a repository. I'm trying to  
12 understand what your position is.

13 No matter how much you deny it, you are  
14 not here in an objective sense whatsoever. My  
15 opinion.

16 And if you will now respond to the first  
17 question on the public record in compliance with NRS  
18 241, the Nevada Open Meeting Law, and tell us where  
19 you are on the record. Thank you.

20 MR. CAMERON: Bill, do you understand the  
21 question?

22 MR. REAMER: I think I do. When we make  
23 a proposal, if it's in the pre-licensing setting, we  
24 will come to Nevada and present that proposal and seek  
25 public comment. We presented proposed regulations a

1 couple of years ago. We are -- hopefully, at some  
2 point we'll be in a position to respond to the public  
3 comments on those regulations.

4 So the gist of my statement is in the pre-  
5 licensing context. When we have a proposal, we will  
6 present it to you for comment.

7 MR. CAMERON: Okay. We're going to go  
8 back here to Kalynda, and then we'll go to Abby  
9 Johnson, and then Dennis Bechtel. And, Kalynda, if  
10 you could just identify yourself for us, please.

11 MS. TILGES: Kalynda Tilges, Citizen  
12 Alert. I had a couple of questions that weren't  
13 addressed last night, and a continuation of one that  
14 was.

15 I asked you a question on slide number 4,  
16 that it has recently come to my attention that  
17 engineers in the Department of Energy are not required  
18 to be licensed. And I asked if the engineers who, in  
19 making these decisions, are required to be licensed by  
20 the Nuclear Regulatory Commission.

21 I was told that some are licensed in other  
22 states but all are professionals. I'd like further  
23 clarity on that as to what states people are licensed  
24 in, what's your definition of a "professional," just  
25 more clarity for one.

1 My second question went with slide  
2 number 9, where you set rules that are consistent with  
3 the EPA standards for Yucca Mountain. I'm kind of  
4 concerned. We've been hearing a lot of news coverage  
5 and backroom talk about the NRC so to speak breathing  
6 down EPA's neck to set higher standards than the EPA  
7 would like to set. And I'm wondering how that fits  
8 in, if you have to abide by their guidelines.

9 And the last question I have is on slide  
10 number 15, that the law requires the Nuclear  
11 Regulatory Commission to adopt the Department of  
12 Energy's final EIS to the extent practicable. What  
13 does that mean?

14 (Laughter.)

15 Thank you.

16 MR. CAMERON: Okay. Thank you, Kalynda.

17 Bill, take those in any order.

18 MR. REAMER: The first question, I think  
19 the details I would need to get back to you, but the  
20 answer to your question last night was there is not a  
21 requirement that engineers -- that we don't impose  
22 a requirement, NRC does not impose a requirement on  
23 its employees that its engineers be licensed. And I  
24 think that's what we provided to you as an answer last  
25 night.

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1           The specifics that you ask for in terms of  
2 information I think I will need to get back to you.  
3 I need to put that in a parking lot and respond, if I  
4 can do that.

5           Now, the other -- okay. The EPA -- the  
6 Environmental Protection Agency submitted a draft  
7 final regulation to the Office of Management and  
8 Budget in January for interagency review. A number of  
9 agencies, including the NRC, are involved in that  
10 review by OMB and are participating in it. The Office  
11 of Management and Budget is participating in it.

12           The NRC's position on standards we have  
13 discussed many times in Nevada, and we continue to  
14 present that position. The result of the OMB process  
15 at some point will be, I believe, issuance of a  
16 standard by EPA that EPA is satisfied with, and the  
17 law requires that the NRC be consistent with that  
18 standard.

19           So it's --

20           MR. CAMERON: And to the extent practical?

21           MR. REAMER: Oh, yes, to the extent  
22 practical is what I was trying to refer to. There are  
23 basically two areas -- it would not be practical for  
24 us to adopt if there were new information not included  
25 in the environmental impact statement that had a

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1 significant environmental impact or environmental  
2 consequence.

3 It would not be practical for us to adopt,  
4 if what was analyzed in the environmental impact  
5 statement was different from what the material is,  
6 significantly different from what the Department of  
7 Energy proposed in the license application.

8 MR. CAMERON: Okay. And I think we have  
9 -- we have a lot of questions, and I'd like to ask  
10 followup on this. But we may have to follow up on it  
11 during the break or come back at the end.

12 Let's go to Abby Johnson, and then Dennis  
13 Bechtel, and up here to Susi Snyder. Abby?

14 MS. JOHNSON: Abby Johnson, Eureka County.  
15 On slide number 14, I have two questions. You said  
16 that you need to verify that the application contains  
17 all of the required information. Is there some kind  
18 of information checklist about what all of that  
19 information is?

20 MR. REAMER: The regulations that we would  
21 issue once the Environmental Protection Agency  
22 standard is set would describe what it is required to  
23 be contained in the application. In addition, the NRC  
24 staff would issue a -- what's called a review plan for  
25 the license application, and that review plan would

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1 further describe what the staff believes is acceptable  
2 to meet that requirement, what must be contained in  
3 the application.

4 The review plan would be issued after the  
5 NRC finalizes its regulations, which won't come until  
6 the EPA issues its standard.

7 MS. JOHNSON: My second question on  
8 slide 14 is it says, "If accepted, the three-year  
9 clock starts," and the clock relates to the NRC staff  
10 safety review. You have three years to do that review  
11 and approve the license?

12 MR. REAMER: The law says that we have  
13 three years. It gives us the avenue to notify the  
14 Congress that we need an additional year, so that the  
15 review could be completed in accordance with the law  
16 really within four years, but the law says complete  
17 the review and make a decision within three years.

18 MS. JOHNSON: Now, if the EIS is under  
19 litigation, how does that relate to the three-year  
20 timeframe? And in your conducting the confirmatory  
21 analysis, if you are doing a confirmatory analysis  
22 which exceeds four years, just like the heater test,  
23 how is that --

24 MR. REAMER: Yes. Taking the last one  
25 first, the question would be: is there enough data

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1 from that heater test and all of the other data to  
2 permit construction? If there is not enough data from  
3 all of the testing to permit construction -- remember  
4 I talked about the step wise process? If there's not  
5 enough data to permit construction, then the  
6 application would not be granted.

7 It's recognized -- we recognize that as  
8 construction continues testing will continue. In  
9 fact, the proposed regulations require that the  
10 Department of Energy continue to analyze data,  
11 including data from the heater test, to analyze that  
12 and to consider whether it's consistent with the  
13 licensing decisions that have been made, with its own  
14 safety case that it has presented.

15 So it will have the obligation to continue  
16 to look at the data from the heater test, to factor  
17 that in, and if there is an operating decision that --  
18 where we decide whether to bring waste to the site,  
19 the new data from the heater test would have to be  
20 analyzed in the context of that decision.

21 MR. CAMERON: And the litigation, EIS  
22 litigation --

23 MR. REAVER: Yes.

24 MR. CAMERON: -- if we need to, we'll go  
25 back to our colleagues from General Counsel. But why

1 don't you give it a whirl.

2 MR. REAMER: Yes, sure. It's a little bit  
3 difficult in abstract to know exactly how that would  
4 play. It's quite possible that the litigation would  
5 be complete. On the other hand, it's possible that  
6 the outcome of the litigation might mean that there  
7 needs to be more environmental impact statement work  
8 done -- in other words, that the statement needs more  
9 work by the Department of Energy.

10 I think all of that we would have to  
11 factor in to our timing decision and consider whether  
12 it really makes sense to go forward without the final  
13 environmental statement being complete, or, you know,  
14 can we do that. And so that's really the best I can  
15 do on this.

16 MR. CAMERON: And Bill is the -- I think  
17 the -- an EIS has to come from the DOE recommendation  
18 to the President. And the assumption is that the  
19 litigation would have to be over before that document  
20 could accompany a Presidential recommendation. I  
21 don't know if that goes to what Abby is asking or not,  
22 but --

23 MR. REAMER: I don't think so. I'm a  
24 little bit out of my area on this, but I don't think  
25 that any litigation needs to be complete before the

1 EIS would go forward.

2 MR. CAMERON: Larry, do you have anything  
3 you want to add on that?

4 MR. CHANDLER: Bill is essentially correct  
5 on that. But the litigation -- the completion of the  
6 litigation is an element of the overall decisionmaking  
7 process leading to potential authorization -- approval  
8 of construction authorization or acting on the  
9 construction authorization, be it approval -- denial  
10 or approval with conditions.

11 So the period of time that the statute  
12 contemplates -- three or four years -- anticipates  
13 extensive licensing review of the application,  
14 environmental documents, as well as the -- anything  
15 associated with the hearing process.

16 MR. CAMERON: Okay. Let's go to Dennis  
17 Bechtel, and then we'll go to Susi.

18 MR. BECHTEL: Dennis Bechtel, Clark  
19 County. When you were considering -- if, in fact,  
20 Department of Energy has not considered adequately,  
21 say, issues on transportation or other issues, will  
22 you consider, say, comments by other organizations of  
23 the state or Clark County, or, you know, when you're  
24 kind of determining the adequacy of how DOE treated  
25 the comments on the EIS.

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1 MR. REAMER: I think I understand. It's  
2 a difficult one to answer. Let's say, for example,  
3 that the comments that someone has on transportation,  
4 they were made to the Department of Energy, and  
5 responded to, and litigated in a federal court. And  
6 the federal court reached the decision that the EIS  
7 was adequate.

8 In that case, I don't think the NRC would  
9 take a second look at those comments. In fact, I  
10 think -- and this is what -- is what the law is  
11 telling the NRC, is not to create a second forum to  
12 consider the adequacy of the EIS. That belongs in a  
13 NEPA process that would follow the environmental  
14 impact statement including the litigation in courts on  
15 that.

16 On the other hand, if there is new  
17 transportation information that was not in the  
18 environmental impact statement, that has raised all of  
19 these comments that you -- the hypothetical comments  
20 that you refer to, then I think the question for us  
21 is, are they material from the standpoint of  
22 environmental impacts? And do they affect this  
23 question of whether it's practical to adopt? We have  
24 to reach a decision on that.

25 MR. BECHTEL: But it's conceivable that

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1 part of the EIS may, in some form, address  
2 transportation, but it may not adequately address our  
3 comments. So does it address --

4 MR. REAMER: Well, I think just the way  
5 you presented it there -- and we don't have a complete  
6 picture of, you know, what we're talking about, so  
7 we're kind of talking in generalities. But if the --  
8 if comments are made as part of the comment process on  
9 the draft EIS, and DOE considers those comments in a  
10 way that the commenter thinks was wrong, then the  
11 commenter has a decision to make about whether to  
12 pursue that as part of the judicial review of that  
13 document.

14 And if the commenter does not pursue, as  
15 part of the judicial review process, then I'm not sure  
16 that NRC would take a look at those comments. I think  
17 the NRC would say, "Well, apparently he was satisfied  
18 with what DOE did, even though it wasn't quite right."  
19 So that's really your responsibility.

20 Do you understand my answer?

21 MR. BECHTEL: Sort of. If, in fact, the  
22 NRC modifies the -- or accepts the modified EIS, would  
23 it be then the final -- or, say, the new EIS be part  
24 of the hearing process? Would that be part of  
25 something that would be considered at a final hearing,

1 or a hearing, separate hearing? I mean --

2 MR. CAMERON: This may be something that  
3 Larry or Dennis is going to cover -- in other words,  
4 the role of the EIS in the hearing process. So if you  
5 don't mind, Dennis, we'll just put that in the parking  
6 lot and come back to it.

7 And we're going to go to Susi, this  
8 gentleman here, and take one more question, and then  
9 we're going to bring on our next presenter. Go ahead.

10 MS. SNYDER: Hi. My name is Susi Snyder,  
11 and I'm with the Shundahai. I have a couple of  
12 questions. The first one is a real quickie, easy one,  
13 which is -- it relates to slide number 9, and deciding  
14 whether to permit construction and then whether to  
15 license the operation.

16 My question is: will this hearing  
17 process, this formal process, apply to both of these  
18 decisions? So will the hearing process go for a  
19 construction permit and then go again for the  
20 licensing permit?

21 MR. REAMER: Yes.

22 MS. SNYDER: Okay. Good. I told you it  
23 was a quick and easy one.

24 The next question is: will this process  
25 apply to modified transportation tasks that would then

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1 be used in the -- to transport wastes to Yucca  
2 Mountain?

3 MR. REAMER: No.

4 MS. SNYDER: Okay. And the last question  
5 I have is: I understood from a meeting with some of  
6 the EPA officials that they're in the process of  
7 preparing a memorandum of understanding with the NRC  
8 and the Department of Energy, which would virtually  
9 eliminate the EPA from the nuke business.

10 And I'm wondering, if that happens, would  
11 the NRC then take the lead on setting standards, or  
12 would that go to Department of Energy?

13 MR. REAMER: Well, the law right now gives  
14 the Environmental Protection Agency the responsibility  
15 to set the standard. I'm not familiar with the MOU or  
16 memorandum of understanding that you are speaking to.  
17 I don't know the scope of it, so I can't directly  
18 respond to that.

19 But my opinion would be the law says that  
20 EPA must set the standard. They must set the  
21 standard. They cannot issue a memorandum of  
22 understanding that says, "We're not going to do that."

23 MR. CAMERON: Could we check at some point  
24 to see if there is such an MOU? All right.

25 Let's go to this gentleman right here, and

1 then we'll take one other question.

2 MR. ELZEFTAWY: Can you hear me? I  
3 usually speak loud anyway. I'm here to just make a  
4 comment -- oh, my name is Atef Elzeftawy. I am with  
5 the Las Vegas Pima Tribe and also their cousins in  
6 Owaka. Those are the tribes that are located here in  
7 Clark County. I-15 goes through the Moapa; 95 goes  
8 through the Snow Mountain Reservation.

9 A couple of months ago the chairman of  
10 both tribes and myself met with the chairman of the  
11 Commission, your Commission, and we expressed our  
12 opinion that we adamantly, as a Native American tribe,  
13 we oppose even the idea of creating a new repository.

14 We did not get into technical things. My  
15 background is about 15 -- 10, 15 years in nuclear  
16 waste, since the passage of the Act, three and a half  
17 with the NRC in Washington, D.C., as a colleague, two  
18 probably with the state, and some others.

19 I'm not addressing here the technical  
20 aspect of that or the hearings. I know all about  
21 that. But the tribe has learned this morning that  
22 there is a meeting and they wanted me to come and  
23 express their opinion that, again, there is something  
24 fishy in this program all along.

25 Technically speaking, the NRC does not



1 have the accurate rule, regardless of how much  
2 knowledge you guys have, as a geologist, as a  
3 hydrogeologist, as a secondary hydrogeologist. The  
4 diversity and the uncertainty in the programs  
5 regarding the engineering design or the geology are so  
6 large that no matter how long and how much money the  
7 DOE is going to spend on it, they are not going to  
8 nail it down.

9 That reminds me with the DNA we have. We  
10 all have the same DNA -- 99.9 percent. Yet each one  
11 of us is completely different. So I don't think we  
12 will have the knowledge to really say how safe as --  
13 as related to that particular scientific knowledge.

14 So what the idea is now, what we want to  
15 today is we wanted to make it -- if that happens,  
16 which they are, it has to be so tight to the point  
17 that it is not going to impact the water or the air or  
18 the environment. They worship that, and they don't  
19 want to see it impacted.

20 They finally got a couple pieces of acres.  
21 They don't want to see these acres to be impacted  
22 either by the transportation or none of these things.  
23 And it's the only land they've had, and that's not  
24 really a fact.

25 The only land we have for these four

1 tribes is that litigation, litigation, litigation. So  
2 somehow, somewhere, the NRC perception is not good.  
3 The DOE perception to these people is not good. And  
4 they would like just to comment and say that you guys  
5 need to tell the truth, and the whole truth, but the  
6 truth.

7 None of us probably -- a few of us around  
8 here knew that every nuclear powerplant which is  
9 designed and passed by the NRC releases radioactive,  
10 except the licensee. I've seen it in other areas.

11 You build a nuclear powerplant in some  
12 place -- and I'm not really a very closed-minded  
13 environmentalist. I know the risk of that. There is  
14 a risk of releasing nuclear powerplants in air. It's  
15 the same thing with Yucca Mountain. Yucca Mountain is  
16 not the safe type, and that will never happen.

17 So their opinion is do the best you can,  
18 but we don't trust them. I'm sorry to say that, but  
19 that's our feeling. Thank you.

20 MR. CAMERON: Thank you.

21 MR. REAMER: And we're not asking you to  
22 blindly trust us. The reason that we're holding  
23 meetings like we hold today, and the reasons that I've  
24 been to Nevada five -- eight times in the last year,  
25 and five times in the last two months, is because we

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1 want to describe what we are doing, we want to  
2 describe what our role is, we want to describe what  
3 our activities are.

4 We want to do that, so that we can get an  
5 understanding of your concerns, which you've expressed  
6 very articulately, and we'll continue to do that. And  
7 that's what I intend to do, respond to the concerns  
8 you've expressed.

9 MR. CAMERON: Okay. Thanks, Bill.

10 We're taking one more question, and then  
11 we're going to bring Larry Chandler up.

12 Steve?

13 MR. FRISHMAN: Steve Frishman with the  
14 State of Nevada. You have a proposed license renewal,  
15 Part 63, and in that it discusses the process for  
16 evaluating the service facility and operations, and  
17 we'll go through the -- I think it's called an  
18 integrity safety assessment, or something like that.

19 Do other rules of the provision apply in  
20 the licensing consideration as well? And let me give  
21 you an example. In our draft supplement to DOE's  
22 draft EIS, one of the options proposes a facility that  
23 is the equivalent of a temporary storage site at Skull  
24 Valley that is right now being -- they're in a  
25 licensing process with the NRC. The facility is

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1. essentially identical.

2. Would the standards of the rule that  
3. applies in that licensing proceeding, Part 72, be  
4. applied to this facility that is within the proposed  
5. DOE service facility?

6. MR. REAMER: Okay. Let's first clarify  
7. what we're talking about is a proposed rule, not a  
8. final rule. Part 63 is a proposed regulation.

9. MR. FRISHMAN: Well, the same thing would  
10. go for Part 63.

11. MR. REAMER: Well, your question related  
12. to the integrated safety assessment which is part of  
13. the proposed Part 63. And that rule needs to be  
14. finalized, and the state requirements that relate to  
15. evaluating preclosure. And then the Department of  
16. Energy needs to demonstrate compliance with that  
17. regulation.

18. The staff will issue a Yucca Mountain  
19. review plan at some point if this project goes  
20. forward, and explain how they will implement -- how  
21. the staff expects to implement that part of the  
22. regulation. At that point, I think the question  
23. should be raised again, because that's where it will  
24. be most transparent to you, Steve Frishman, what the  
25. staff would find acceptable under Part 63.

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1 And if there were specific aspects that  
2 you felt should be included that weren't, because of  
3 Skull Valley, which you've mentioned, I hope you would  
4 state this.

5 MR. CAMERON: Okay. Thanks, Bill.

6 If there's some clarification that we can  
7 give Steve on that question during the break, let's do  
8 that.

9 MR. FRISHMAN: I'll be here trying to get  
10 it.

11 MR. CAMERON: Okay. Thanks, Bill.

12 We're next going to go Larry Chandler, who  
13 is going to give you an overview of the hearing  
14 process. We'll then go to you for overview  
15 questions, and then we'll take a break, and then we'll  
16 come back to Dennis Dambly, who will give us some  
17 specifics.

18 MR. CHANDLER: Thank you, Chip.

19 I do appreciate the opportunity to be here  
20 this afternoon. Some time ago I had received some  
21 questions that had been raised following some other  
22 meetings that were out here, and it's clear that there  
23 is some mystery perhaps associated with the NRC's  
24 hearing process.

25 I hope I can provide some information to

1 you all that might demystify that process, put a  
2 context on the hearing process as it fits into the  
3 overall status of the Commission review of a pending  
4 application that may be received with respect to a  
5 repository.

6 I'll try to provide a general overview  
7 first of how the NRC hearing process works. As Chip  
8 mentioned at the outset, Dennis Dambly, my colleague,  
9 will continue shortly after that with some more  
10 details on the specific rules that are in place for  
11 any proceeding that may relate to a repository  
12 hearing.

13 I'm going to address the current rules  
14 that the Commission applies in the hearing process.  
15 Those are the rules in Title 10 of the Code of Federal  
16 Regulations in Part 2. I will not address some  
17 proposed changes that the Commission recently  
18 published, roughly a month ago, which will have some  
19 effect on the rules in Part 2, some in particular that  
20 will bear, or could bear I should say, on the hearing  
21 for a repository.

22 Those were largely streamlining rules.  
23 They do affect some of the timeframes involved -- that  
24 could be involved, but don't overall affect the  
25 substantive way in which a hearing is conducted.

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1 For those of you who may be interested,  
2 I'd be happy to provide a citation to those rules.  
3 And just to let you know, the comment period on them  
4 has been extended recently, and any comments on those  
5 proposed rule changes can be submitted by the middle  
6 of September of this year.

7 In connection with those proposed rules,  
8 though, there was one decision the Commission made  
9 that is fairly substantial and significant with  
10 respect to a repository proceeding. The Commission  
11 affirmed that it would use its formal rules of  
12 practice in connection with the repository proceeding.

13 There has been some discussion about using  
14 some informal procedures, but in the end the  
15 Commission decided to continue to apply the rules in  
16 Subpart G, the so-called formal hearing process, to  
17 augment the rules that are otherwise laid out in  
18 Subpart J, which are specific to a repository  
19 proceeding.

20 What is a hearing? This is not a hearing.  
21 This is a public meeting. We're here just to  
22 communicate information to you. We're not going to  
23 make a decision. Hopefully, we can understand --  
24 achieve some initial understanding of your concerns  
25 and views of the process that we will apply in terms

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1 of our review.

2 The Commission has typically employed two  
3 -- as a general matter, two different kinds of  
4 procedure. The formal procedures of Subpart G that I  
5 referred to tend to be, if you will, trial-type  
6 procedures. I'm sure many of you have seen trials.  
7 They are a fairly structured and regimented process,  
8 although our administrative proceedings don't  
9 literally and universally apply the federal rules of  
10 evidence or procedures. They are a little more  
11 lenient and forgiving in that respect.

12 The Commission's informal rules of  
13 practice, just for informational purposes, tend to be  
14 largely paper exchange type of proceedings. Another  
15 type of hearing process that you may be familiar with  
16 are the kinds of legislative hearings that are often  
17 held in connection with perhaps zoning board hearings  
18 or school board hearings.

19 The difference largely is driven -- or may  
20 well be driven by the types of decisions that need to  
21 be reached. What is the kind of information the  
22 decisionmaker wants to receive, needs to receive, in  
23 order to make an informed decision on the issue that's  
24 before them? What has to be decided?

25 The Commission's decision on an issue of

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1 such great magnitude and technical significance will  
2 be based on a very highly technical and sophisticated  
3 record. And as a result, the information that will  
4 support -- will be necessary to support any decision,  
5 the decision to grant or deny a license application,  
6 will be testimony, evidence offered by expert  
7 individuals, which will be scrutinized to ensure that  
8 individuals have the requisite qualifications to offer  
9 that testimony.

10 And that's true of witnesses and evidence,  
11 either written or oral testimony, or other documented  
12 evidence -- testimony offered by the Department of  
13 Energy in support of this application, testimony  
14 offered by the NRC staff, testimony offered by any  
15 other party to the proceeding.

16 Who are the participants who will be a  
17 party in the proceeding? The regulations make it very  
18 clear that the NRC staff will be a party in the  
19 proceeding. The staff, as Bill described, has an  
20 independent responsibility to review the application,  
21 and that is an obligation that exists independent of  
22 any hearing that may be going.

23 It is charged with reviewing whatever  
24 application is submitted by the Department, and it is  
25 also going to be responsible for presenting its

1 resolution of the issues that are placed in  
2 controversy in a hearing, if one is held.

3 There is also an opportunity for  
4 individuals and others to intervene in the hearing  
5 process. You'll hear Dennis talk a bit about  
6 intervention in the licensing process and what  
7 requirements are in the Commission's regulations with  
8 respect to that.

9 There are also particular provisions that  
10 relate to the host state, units of local government,  
11 affected Indian tribes, etcetera.

12 One thing that is very clear to all of us  
13 at this point is that the repository proceeding,  
14 irrespective of where the repository may be located,  
15 is going to be an extremely complex and extremely  
16 novel proceeding, and there are going to be a lot of  
17 issues that we will revisit that will apply to how  
18 people's requests to participate are going to be dealt  
19 with. And I'm not going to even try to get very  
20 specific about how those rules would be applied.

21 Another key ingredient -- we can go on to  
22 the next slide -- another key ingredient is that a  
23 proceeding with respect to the licensing of the  
24 repository will be conducted by -- before an Atomic  
25 Safety and Licensing Board. An Atomic Safety and

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1 Licensing Board is a three-member panel. It's  
2 comprised of one legal member who will preside, and  
3 typically two technical members.

4 This is a board that will be drawn from an  
5 independent Atomic Safety and Licensing Board panel,  
6 which I believe has currently some seven full-time  
7 members, I believe 15 part-time members. A number of  
8 them are attorneys and a number of them are engineers  
9 with various backgrounds in health physics. They're  
10 medical doctors, environmentalists. I think there's  
11 one with a geology background at this point.

12 One of the other things to bear in mind is  
13 they will conduct the hearing typically in the  
14 vicinity of where the -- typically the vicinity of the  
15 site of the activity. Now, that doesn't necessarily  
16 mean right next door. It's in the vicinity. And I  
17 wouldn't attempt to tell you today where that hearing  
18 would be held.

19 Another thing to bear in mind is that if  
20 -- we would not be surprised to see a proceeding would  
21 be very highly contested, involving a large number of  
22 parties, a very large number of interests. If it is  
23 possible to do so with regard for the need to conduct  
24 a fair proceeding to all participants, it's  
25 conceivable that more than one board could be

1 established and more than one hearing run in this  
2 process.

3 Next slide, please.

4 The public has a number of opportunities  
5 and ways in which it can participate in the process.  
6 What I'm going to describe are the public's  
7 opportunities independent of how and what forum may be  
8 made available by the staff -- Bill Reamer's staff in  
9 connection with its review. I'm just going to focus  
10 on what may occur in connection with the hearing.

11 Certainly, members of the public are  
12 always free to attend and observe pre-hearing  
13 conferences and the hearing process itself. There may  
14 be some limited exception if proprietary or if other  
15 types of privileged information are being discussed.  
16 But as a general rule, the public is invited to attend  
17 and observe any of these hearings.

18 Members of the public can make limited  
19 appearance statements. And most of all, irrespective  
20 of how you participate, either in those ways or, in  
21 fact, you're a full party, no lawyer is required. I  
22 mean, if someone wants to become a party, and a  
23 petition is granted, you may choose to retain an  
24 attorney, but certainly that's not a prerequisite to  
25 participation.

1 As I mentioned, a more formal method of  
2 participation is as a full party. And that -- and  
3 Dennis is going to touch on that in more detail --  
4 would be started by filing a petition for leave to  
5 intervene, and if that petition is granted you would  
6 have full rights to participate as a party.

7 What that means, then, is that you'll have  
8 a right to present evidence, cross examine witnesses,  
9 and Dennis will get into that in some detail.

10 Finally, another way in which an  
11 individual can be involved in this is to authorize an  
12 organization to represent his or her interest in the  
13 proceeding. There are any number of organizations  
14 that exist which have views on the repository, for  
15 example, and who may be perfectly willing and happy to  
16 represent you as an individual if that's what you  
17 wish.

18 Now, I had mentioned the limited  
19 appearance statements. Limited appearance statements,  
20 so you understand, are statements by non parties.  
21 They are typically made in a special session of the  
22 hearing after it is held, or it actually may be a pre-  
23 hearing conference and may not be at a hearing.

24 People need to understand, these  
25 statements that are made are not evidence. They will

1 not -- those statements will not be part of the  
2 evidentiary record. They will not be used by the  
3 presiding Atomic Safety and Licensing Board in  
4 reaching a decision.

5 But individuals are given an opportunity  
6 to express whatever views they may have -- simple but  
7 very sincere and heartfelt sentiments opposing a  
8 particular licensing action, or perhaps more  
9 substantive technical issues.

10 The staff will review the information set  
11 out in limited appearance statements -- and, again,  
12 those could be written or oral -- but the staff will  
13 look at them. And if there is technical information  
14 contained in there, the staff will assure that it's  
15 appropriately taken account of.

16 There are occasions where new technical  
17 information not previously known to the staff is  
18 raised, and the staff has taken that into account.  
19 They've at least looked into it and decided whether  
20 it's something that needs to be addressed in its  
21 review of the particular application.

22 Now, the next slide contains three web  
23 addresses for further information. Our general home  
24 page, a site where you can find our rules of practice  
25 as well as a site where you can take a look at what

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1 the appropriate -- the pertinent legislation that  
2 governs NRC's overall activities can be located.

3 Bill briefly touched on the fact that the  
4 statute, the Nuclear Waste Policy Act of 1982,  
5 provides a three-year period for the overall review of  
6 the application and any licensing proceeding in  
7 connection with the possible issuance of instruction  
8 authorization.

9 There's no question it's an extremely  
10 ambitious schedule. It's an extremely tight schedule.  
11 It's one in which we're going to work hard to meet.

12 There is a possible one-year extension of  
13 that if the Commission requests that of Congress.

14 If there is further detail to the hearing  
15 process as it might be carried out within that  
16 timeframe -- again, that's found in our rules of  
17 practice in 10 CFR Part 2, in particular Appendix D to  
18 that rule.

19 Now, there are four fundamental phases in  
20 a repository proceeding. I would think that in most  
21 of our licensing cases there are typically three. In  
22 connection with a repository proceeding, however, the  
23 first phase, the pre-license application phase, has a  
24 lot more substantive significance if you will than it  
25 does in other cases.

1 Dennis going to touch on these -- the  
2 first, again, being the pre-license application phase,  
3 and then the pre-hearing phase, the evidentiary  
4 hearing, and finally, the appeal.

5 At this point, I'd be happy to take any  
6 questions on the general overview and -- before  
7 turning it over to Dennis. I will come back and talk  
8 further about what we've identified here as the appeal  
9 process.

10 MR. CAMERON: Okay. If there are  
11 questions that come up that Dennis is going to cover  
12 in more detail, we'll put those in the parking lot.  
13 But we'll see what the questions are for Larry before  
14 we do that.

15 Let's -- we'll go in back and then we'll  
16 come up front. Yes.

17 MS. SARTIN: Yes. Jenney Sartin, Clark  
18 County. I would like to revisit a question Dennis  
19 asked you earlier with regards to the consideration of  
20 information. I'm not going to -- I'm going to be much  
21 more direct than Dennis, so forgive my directness.

22 The fact of the matter is is the general  
23 feeling of Clark County is that the DOE has chosen to  
24 ignore information that has been provided to them.  
25 And so getting right to the point, we considered this

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1 to be information that has not been considered. And  
2 during the process, we then reconsider that  
3 information.

4 MR. CHANDLER: I see. You're referring to  
5 environmental information and how you --

6 MS. SARTIN: Transportation,  
7 socioeconomical, and as well as safety and health  
8 issues, but particularly transportation.

9 MR. CHANDLER: I would defer to Bill  
10 Reamer. I'm not going to debate your question, but  
11 Bill has the overall responsibility for the way in  
12 which -- and the scope of the staff's technical  
13 review.

14 If an individual is participating,  
15 however, in the hearing process and believes there is  
16 some deficiency in an application, as well as error in  
17 the application, that may well be the basis for an  
18 accident -- that contention. Again, that's something  
19 Dennis will talk about in more detail.

20 But if someone were to raise a specific  
21 contention asserting that there is a deficiency of  
22 some kind, it may well be something that could be  
23 addressed in the hearing process. Again, since we're  
24 talking generalities at this point, it's sort of  
25 difficult for me to -- to be more specific.

1 MR. CAMERON: Does that answer your  
2 question in conjunction with what Bill said earlier?

3 MS. SARTIN: Well, I guess I'd like to ask  
4 you to answer yes or no.

5 (Laughter.)

6 MR. CHANDLER: Bill can say yes or no.  
7 Since I'm a lawyer, I'll talk.

8 MR. CAMERON: All right. Let's go to  
9 Susi.

10 MR. HARNEY: My name is Corbin Harney.  
11 I'm a Shoshill Indian. Very briefly, I wanted to ask  
12 you people, you have said time and time again the law  
13 protects the public, the law protects the land, the  
14 law protects the water, and so on and so forth.

15 Today I hear you guys are saying -- it  
16 seems like you guys are flipflopping from one end to  
17 the other. Are you working for the DOE? Are they  
18 paying you wages?

19 MR. CHANDLER: No.

20 MR. HARNEY: They must be, because the way  
21 you guys talk. Today I'm going to ask you again --  
22 the line out there, what DOE has been using, they ask  
23 that question time and time again, under the law of  
24 the United States Government, do they own the land?  
25 Under what law do they own it? And today I'm still a

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1 landowner on that part of the country?

2 I wish you guys would -- if you -- you are  
3 going to make a decision, make a decision right now  
4 for the Federal Government itself. Did they took the  
5 land away from us, or are they just using it, or what  
6 are they doing? We don't want to be lied to. We've  
7 been told a lie for 500 years as an Indian people.

8 It seems to me like every meeting that  
9 we've been to it's flipflop from one end to the other.  
10 Never have they give us a true answer on whatever we  
11 ask. I wish you guys would this time. I hope that  
12 you can talk to the DOE and find out for sure, or the  
13 Federal Government itself, Congress, whoever. Do you  
14 own the land? Under what law?

15 Thank you.

16 MR. CAMERON: Larry, you -- for Corbin and  
17 others, you may want to talk about how the land  
18 ownership issue might be raised in the -- that's an  
19 issue that, I take it, could possibly be raised in a  
20 licensing proceeding, because there is a requirement  
21 in the NRC regulations. That may be the best that you  
22 can do, put that in context.

23 MR. CHANDLER: I can only really give you  
24 a very, very general answer. Let me answer your first  
25 question.

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1           Let me first, before I even answer a  
2 question, make one statement. I certainly hope that  
3 we, the NRC, have not flipflopped. I certain hope  
4 that our answers have been consistent. Let me answer  
5 the first question, though, and that is, no, we are  
6 not part of the Department of Energy.

7           We are, as Bill said, an independent  
8 regulatory agency. We are not run by the Department  
9 of Energy. We are responsible for independently  
10 reviewing applications for activities which are  
11 subject to our licensing. In this case, Congress has  
12 seen fit specifically to require us to independently  
13 review and license and oversee any repository that may  
14 be built by the Department of Energy.

15           There is a need under our regulations to  
16 assure that our licensees have adequate control over  
17 the facilities. That would include appropriate  
18 ownership or other entitlement to the lands. In this  
19 case, the Department of Energy is the one who, as a  
20 federal agency, has the initial responsibility to  
21 assure that it has the requisite interest in the  
22 property that it will be using for a repository, much  
23 as it would for any other site.

24           MR. CAMERON: Okay. Thank you.

25           Let's go here, and then we'll go up into

1 the front row. Excuse me. If you could just give us  
2 your name, please.

3 MS. GEBHART: I'm Debby Gebhart, and I'm  
4 a housewife. And is this the same agency that  
5 regulates the plant in Henderson that seems to blow up  
6 every 10 years?

7 (Laughter.)

8 Blow up the town?

9 MR. CAMERON: I certainly hope not. I'm  
10 not aware of any facility that we've licensed that's  
11 blow out in the last 10 years.

12 MR. CHANDLER: Okay. We do not regulate  
13 -- let me, just to the extent Ms. -- I'm sorry. I  
14 didn't get your name.

15 MS. GEBHART: Debby.

16 MR. CHANDLER: Debby, we, as a general  
17 proposition, do not regulate Department of Energy  
18 facilities. There are only very narrowly limited  
19 exceptions to that that are laid out in the Energy  
20 Reorganization Act. Repository is one of those.  
21 There are only very few others. Department of Energy  
22 is otherwise self-regulated.

23 MR. CAMERON: Okay. Thanks.

24 We're going to go to Mr. McGowan, Abby,  
25 and that gentleman back there.

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1. MR. MCGOWAN: I have a compound statement  
2. and question, approximately one and a half minutes, if  
3. you can spare that much time. I'll try to hasten  
4. along.

5. It's time everybody in this assembly  
6. understood clearly the Treaty of Ruby Valley was  
7. ratified in 1863, approximately 80-plus years prior to  
8. the achievement of manmade, artificially produced  
9. nuclear material and nuclear waste.

10. There was no provision in the Ruby Valley  
11. Treaty for the use of any land for nuclear waste or  
12. testing or anything you are talking about. So when  
13. you get the time in your demanding schedule, you might  
14. respond with the actual truth, if that's not too  
15. uncharacteristic.

16. My name is Tom McGowan, Las Vegas  
17. resident. The current population of southern Nevada  
18. is approximately 1.3 million people, and the seating  
19. capacity of this NRC meeting premises is approximately  
20. 50 people, including you, which equates to  
21. one/26,000th of the total population of the southern  
22. Nevada greater regional area.

23. No federal agency or other entity has  
24. other previously attempted to convey edu/into material  
25. pertinent to a non-existent and as yet non-NRC

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1 license approved or applied for underground repository  
2 for the storage of high-level nuclear waste at Yucca  
3 Mountain, Nevada, or elsewhere nationally.

4 And no entity has ever previously  
5 attempted to conduct a fully-informed public  
6 participant open hearing process on such a volumetric  
7 scale regarding any such non-existent and non-NRC  
8 license-applied and approved repository.

9 Therefore, directed exactly at the Office  
10 of the General Counsel, individually or in toto,  
11 precisely how and on what documentable real-world  
12 experience or other factual and reasonable basis does  
13 the NRC's Office of General Counsel propose, much less  
14 actually intend to formulate and implement -- and that  
15 needs to be done through successful completion -- any  
16 such historically unprecedented public edu/info  
17 process, and then to bring an open public hearing  
18 process consistent with the eminent principle of  
19 public participation in the democratic process by all  
20 1.3 current southern Nevada residents and any  
21 additional population influx, as well as their ensuing  
22 progeny, within any realistically projected as  
23 reasonably foreseeable term whatsoever?

24 Please identify yourself by name and  
25 official title and respond on the public record of the

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1 meeting minutes and proceedings in compliance with  
2 NRS 241 and the Nevada Open Meeting Law. This is  
3 submitted in written text for inclusion in your  
4 minutes. I expect to see it. Thank you.

5 MR. CAMERON: Thank you very much, Mr.  
6 McGowan.

7 MR. CHANDLER: The response is a very  
8 simple response, quite frankly. The staff will  
9 perform an independent review of the applications.  
10 Bill Reamer has described earlier the staff's  
11 competence and expertise to perform the necessary  
12 review. That review will be fully documented in a  
13 publicly available document. That review will be  
14 subject to hearing.

15 If people have a basis for challenging  
16 that and you wish to participate in an open hearing  
17 process, they will have an opportunity to do that. A  
18 record will be created which will contain evidence  
19 submitted by the Department of Energy, the Nuclear  
20 Regulatory Commission staff, and any other  
21 participants in that process from which a reasoned,  
22 objective decision will be prepared, which will either  
23 support the issuance of or the denial of or the  
24 issuance with conditions of a permit.

25 MR. CAMERON: Thank you. And I think



1 we'll maybe have more information about that  
2 particular Nevada statute that you mentioned.

3 MR. MCGOWAN: Thank you very much.

4 MR. CAMERON: All right. Abby Johnson?

5 MS. JOHNSON: Abby Johnson, Eureka County.  
6 I have a question on your slide 20. You indicated  
7 just physically representatives of the NRC staff  
8 include the NRC staff, and that one of their functions  
9 is to present resolution of issues.

10 And I guess I have a half a comment and a  
11 half a question. And the half a comment is the kind  
12 of feedback that there is here about who are you guys,  
13 who do you really work for, comes from our concern  
14 that resolving the issues means getting to yes, and  
15 that there is really two ways to go, and one is yes  
16 and one is no.

17 And how does the NRC resolve -- the NRC  
18 staff resolve issues, so that they aren't always to  
19 the advantage of the applicant? And what can you do  
20 to prove to us that there is anything that you would  
21 do other than that?

22 MR. CHANDLER: Okay. Let me -- can I  
23 answer that before you go on to the next question?  
24 The process -- and it is a very open process -- is an  
25 iterative process. It's not unique to the licensing

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1 of the repository.

2 It's a process the staff uses in  
3 connection with all of its licensing activities -- if  
4 it has to do with licensing of a reactor facility, if  
5 it has to do with review of a materials licensing  
6 application. The process is one in which the staff  
7 will review an application that's submitted.

8 As Bill described it initially, there is  
9 an initial acceptance review to make sure that  
10 fundamentally it contains all of the information that  
11 it needs to have. But as the staff goes more in depth  
12 through its review process, typically it will identify  
13 the shortcomings, deficiencies, questions on which  
14 resolution is required.

15 And those questions are transmitted back  
16 to an applicant. In this case, it would be the  
17 Department of Energy. The Department of Energy is  
18 responsible for responding and providing sufficient  
19 information to allow the staff to complete its review.

20 That has an unfortunate appearance, I  
21 gather. I can understand that, over time, having  
22 witnesses. But it has the unfortunate -- it creates  
23 the unfortunate impression that we are speaking with  
24 one voice, and that's not true.

25 We will have gone through a process of

1 objective, substantive questioning of an application  
2 to assure that, in fact, it provides all of the  
3 information necessary, and that, in fact, demonstrates  
4 compliance with our requirements.

5 Only then would the staff decide that,  
6 yes, it's acceptable to grant such a license, or, no,  
7 that it's not. Now, you say there are instances in  
8 which the staff has said, "No, it's not." Yes, there  
9 are examples.

10 Just recently the staff -- and the first  
11 thing I'll give you is one which is levels of --  
12 orders of magnitude difference in terms of scale. But  
13 the staff recently denied a materials license  
14 application for a particular device. It was some kind  
15 of radiation device.

16 It was denied. The applicant requested a  
17 hearing on it, and the staff prevailed. The license  
18 was not issued. In terms of larger scale facilities,  
19 there are reactor facilities which were applied for,  
20 and licenses were never granted.

21 You go back in time in -- you know, I  
22 believe it was the mid to late '60s, there was a  
23 facility in California that was located south of Los  
24 Angeles. It was applied for by the Los Angeles  
25 Department of Water and Power.

1 I think the facility's name was Malibu.  
2 It was never built, because there were technical  
3 questions raised about the adequacy of its design and  
4 ability to withstand earthquakes in that particular  
5 instance that were never satisfactorily answered.

6 It was in the hearing process. It was  
7 never completed. A license was never issued to  
8 authorize construction of that facility.

9 There was a facility proposed -- I believe  
10 it was -- I couldn't tell you whether it was the very  
11 late '60s or early '70s -- for the New Volt Island  
12 Facility, a nuclear powerplant located -- proposed to  
13 be located in Jersey -- New Jersey by the New Jersey  
14 -- Public Service Electric and Gas Company of New  
15 Jersey.

16 There were problems with this location,  
17 and it -- through the iterative process of going back  
18 and forth with questions of the applicant in that  
19 instance, the utility decided that it would not be in  
20 a position to fully address all of the questions.

21 And as a result, they resited the  
22 facility. There was a license issued but the facility  
23 -- those facilities had a completely different  
24 location -- Hope Creek.

25 In the '80s, we've seen any number of

1 instances in which the Commission has raised very,  
2 very significant questions about the construction, the  
3 adequacy of construction, quality assurance applied to  
4 the construction of large nuclear facilities.

5 Diablo Canyon had an operating license  
6 issued in 1981, and almost on the heels of its  
7 issuance the Commission issued an order suspending  
8 that license because of deficiencies that were  
9 discovered in the design of that facility -- design  
10 and construction of the facility.

11 It took several years and very significant  
12 financial as well as technical review by the applicant  
13 before that facility was allowed to resume operation.

14 The Watts Bar facility was started in  
15 1970. I'd be happy to go on.

16 MS. JOHNSON: I think you can stop.

17 (Laughter.)

18 And my second, hopefully shorter, question  
19 is -- on slide number 22, you talk about public  
20 opportunities.

21 MR. CHANDLER: Yes.

22 MS. JOHNSON: Observing pre-hearing  
23 conferences and evidentiary hearings. Would that be  
24 in the vicinity of the proposed repository as well?

25 MR. CHANDLER: Yes. Yes. I mean, I --

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1 the general expectation is that hearings are conducted  
2 in the vicinity of where the proposed activity would  
3 take place. And those sessions would be held at --  
4 that was a shorter answer.

5 MR. CAMERON: Okay. We're going to go to  
6 this gentleman and back here, and then to the more --  
7 less direct Dennis Bechtel again.

8 (Laughter.)

9 MR. PERNA: My name is Frank Perna. Will  
10 the DOE and the NRC legal staff study the 1863 Ruby  
11 Valley Treaty to see if the Federal Government is  
12 legally able to be on the Yucca Mountain site? Since  
13 there is some confusion, wondering if they own it.

14 And I have another question. Is nuclear  
15 power safe, clean, and is there a lot of fuel readily  
16 available? This statement was made by Vice President  
17 Cheney.

18 MR. CAMERON: I think that's definitely a  
19 parking lot question.

20 (Laughter.)

21 Could you do the treaty with Ruby Valley,  
22 please?

23 MR. CHANDLER: I haven't, in particular,  
24 looked at that treaty to determine whether it provides  
25 the requisite control at this point. At this stage,

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1 I would expect -- and, see, this is my conjecture,  
2 because I haven't spoken personally, that the  
3 Department of Energy attorneys have assured themselves  
4 that they have the requisite entitlement to the  
5 property thereon to construct the facility that they  
6 are proposing or they may propose to construct.

7 MR. CAMERON: Okay. Let's go back here.

8 MS. SARTIN: Jonney Sartin, Clark County,  
9 Nuclear Waste Division, the more direct half of the  
10 team.

11 The question I have -- and I'm sorry --  
12 Dennis, I couldn't resist, because you opened the door  
13 for me. You said that this is a very open process.  
14 Those were your exact words, correct?

15 MR. CHANDLER: Yes.

16 MS. SARTIN: Then, could you tell me, sir,  
17 how many more closed meetings are you holding with the  
18 DOE in which other parties will not be allowed to  
19 attend?

20 MR. CHANDLER: I'm not aware of any closed  
21 meetings.

22 MS. SARTIN: Okay.

23 MR. CAMERON: That's probably a question  
24 that needs to be answered or at least the process to  
25 be able to -- explained. Bill, can you do that for

1 us?

2 MR. REAMER: Our meetings with DOE are  
3 open meetings. I guess I -- there is obviously a  
4 meeting that has occurred that I'm not aware of, or  
5 something -- some information that you have that may  
6 be in error. So I'd suggest that --

7 MR. CHANDLER: Well, then, it wasn't  
8 closed.

9 MS. SARTIN: I was the one actually who  
10 went.

11 MR. CAMERON: Well, let's ask Dennis to  
12 provide some more information.

13 MR. BECHTEL: Yes. Dennis Bechtel. I  
14 think what Jenney has referred to is the -- and I am  
15 a little bit concerned about this, too, that there  
16 were -- they were discussions issues or some of the  
17 questions between the parties, and then in order to  
18 apparently clarify positions the NRC and/or DOE will  
19 caucus on an issue, and then come back and then  
20 provide an answer or a resolution.

21 But, unfortunately, the link that's  
22 missing is the public who was at the meeting who may  
23 not understand, you know, the process that led to the  
24 particular decision.

25 Now, I know it might be hard to understand



1 this process, and I don't even -- you know, you try to  
2 work issues out before you go back to the public. I  
3 think because the issue is so controversial, you know,  
4 it leads to suspicions, I guess, you know, that -- at  
5 meetings like that.

6 So, and I know you had another question,  
7 but that's --

8 MR. CAMERON: Right. Let's hear what Bill  
9 has to say.

10 MR. REAMER: Okay. Dennis, thanks for the  
11 clarification. If you're referring to caucuses that  
12 we, the NRC staff, hold in connection with meetings  
13 that were public meetings that are noticed and held  
14 with DOE, there are no DOE people who are in those  
15 closed caucus meetings. Those are just NRC and NRC  
16 contractor staff people who are discussing their  
17 position.

18 After the meeting and we state a position,  
19 all of the reasons that we used to support that should  
20 be available to members of the public to understand.  
21 If there is a question you have about a -- why we hold  
22 the position we do, that meeting is in part designed  
23 so that you can get that question answered.

24 MS. SARTIN: Will we get copies of the  
25 transcripts for a caucus meeting?

1 MR. REAMER: The caucus meetings are --  
2 only NRC staff people are in the caucus meeting, and  
3 there are no transcripts that are kept.

4 MS. SARTIN: For DOE people and --

5 MR. REAMER: There are no DOE people in  
6 our caucus meetings. I can assure you of that.

7 MR. BECHTEL: I have a question about your  
8 slide number 20, about your categories of  
9 participants. As you're aware, because of the Nuclear  
10 Waste Policy Amendments Act, there are three different  
11 categories in effect. DOE named 10 counties as  
12 effective use of local government.

13 And I think we feel we're -- the reason we  
14 were named is because of the concerns about impacts,  
15 you know, to each of the counties. But I think we  
16 ought to think of ourselves as participants. Are we  
17 considered participants? I guess because of the fact  
18 of the -- we are identified in the law and rather,  
19 named by DOE as affected parties -- and perhaps Dennis  
20 is going to address this.

21 But I'd like to get some clarification on  
22 just, are we participants?

23 MR. CHANDLER: Dennis is going to talk  
24 about that.

25 MR. CAMERON: Do you want to say anything

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1 about it? We're going to mark it down for Dennis --  
2 status of AULCs in hearing.

3 Okay. We'll take a couple more questions,  
4 and then we'll take a break, and so we can get Dennis  
5 up there.

6 MS. SHANKLE: Judy Shankle from Monroe  
7 County Nuclear Projects Office. Basically, my  
8 question is, we've gone through many of these key  
9 technical issue meetings where DOE will come up with  
10 something, your scientists may not agree with. So it  
11 seems to be a continual process where DOE will correct  
12 what was brought up before.

13 If DOE gets to the licensing process and  
14 you all find that they are lacking some part of the  
15 requirements, and so forth, would they be denied the  
16 applicant -- would they be denied to build this  
17 repository, or would this be a continuing process if  
18 they didn't need some part of the licensing  
19 application?

20 MR. CHANDLER: Let me see if I can phrase  
21 it. You're suggesting that we would be at the hearing  
22 stage, although there is a deficiency that the staff  
23 believes exists with respect to the application. That  
24 is, the application doesn't, in our view, demonstrate  
25 compliance with all of our requirements.

1           If DOE wished to continue, it certainly  
2           would have an opportunity to satisfy a board, to try  
3           and satisfy a board that, despite what the staff's  
4           views were on the deficiency, in their view it was a  
5           sufficient application that should be granted.

6           The staff would present its position with  
7           respect to the deficiency in the application. And  
8           eventually the other parties would be heard on that as  
9           well, and a decision on that matter would be issued by  
10          the board.

11          The board will focus and will address the  
12          matters and the controversial issues that are raised  
13          by the parties, and you'll hear that talked about.

14          MR. CAMERON: I think -- Judy, was part of  
15          your question also, could the -- if there was such a  
16          deficiency, could the Department then correct that  
17          deficiency, correct the license application during the  
18          hearing?

19          MR. CHANDLER: Yes. I think they -- I  
20          can't imagine a situation where they would get to that  
21          stage that we're in a hearing process with that type  
22          of an issue still lingering. But yes.

23          MR. CAMERON: Yes, they --

24          MR. CHANDLER: They could correct or, you  
25          know, fill some void in the application, so long as it

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1 becomes part of the record of the proceeding and all  
2 of the parties have an opportunity to consider it.

3 MR. CAMERON: Okay. Maybe we'll hear some  
4 more about that later. Steve?

5 AUDIENCE MEMBER: I want to come back to  
6 the issue of the dispute over the treaty rights and  
7 also the land. I want to come at it acknowledging  
8 that you're an attorney for the NRC. And the  
9 Shoshonis have a claim that is at least -- at the very  
10 least recognized as a claim controversy.

11 The Department of Energy does not  
12 acknowledge that it's a controversy. The Nuclear  
13 Regulatory Commission, regardless of whether you take  
14 the existing rule or the proposed rule, there is a  
15 requirement that the Department approve ownership and  
16 control of the land for the repository.

17 How does the Shoshoni claim controversy  
18 get to where it is, in fact, considered and ruled upon  
19 one way or another in this licensing proceeding?

20 MR. CHANDLER: And there's no -- I mean,  
21 there's no question that issues in a hearing can raise  
22 both technical matters and legal matters.

23 AUDIENCE MEMBER: Well, it's unlikely that  
24 the Shoshoni are going to be able to qualify as a  
25 party.

1 MR. CHANDLER: I don't know.

2 AUDIENCE MEMBER: Well, let's assume that  
3 it's unlikely. Without them there raising that, or  
4 someone else raising it as a contention. --

5 MR. CHANDLER: It wouldn't be before the  
6 board.

7 AUDIENCE MEMBER: -- would it ever be  
8 considered?

9 MR. CHANDLER: It would not be an issue  
10 before the board, and the board will not decide the  
11 matter. But as I said before, the staff has an  
12 independent responsibility to review the entirety of  
13 the application to assure that it complies with all  
14 the requirements.

15 AUDIENCE MEMBER: Okay. And that's what  
16 I'm getting at. How do we know that the staff will  
17 acknowledge that, as a matter of --

18 MR. CHANDLER: The staff will deal with  
19 the issue. The staff will deal with the issue in a  
20 safety evaluation report, I would expect.

21 AUDIENCE MEMBER: Okay. But there's no  
22 process by which it's assured that the staff will deal  
23 with it in its overall safety evaluation, with a  
24 pretty good possibility that it would never come up in  
25 a meeting.

1 MR. CHANDLER: No, I'm not willing to  
2 accept that, you know, hypothesis. If it is a real  
3 issue of the legal sufficiency, the legal entitlement  
4 of the Department of Energy to control this piece of  
5 land, other parties who can develop standing can raise  
6 the issue. I mean, it's not limited to the Shoshonis.  
7 Other individuals can seek to raise any number of  
8 issues.

9 It's not the ability to raise a  
10 contention is not confined to the basis upon which you  
11 are trying to establish -- I'm going to talk about  
12 Dennis' stuff, and I'm talking too much, and he ought  
13 to talk more. But you're not confined to the scope of  
14 the standing -- of your standing.

15 MR. CAMERON: So you . . .

16 MR. CHANDLER: So other people can raise  
17 an issue regarding --

18 MR. CAMERON: Well, I think that's  
19 important for people to understand. And, Dennis, you  
20 may want to go over that again.

21 Let's take one more question, and let's  
22 take a break.

23 MR. CHANDLER: Corbin, did you want to say  
24 something?

25 MR. HARNEY: Okay. In the treaty -- the

1 law of the land -- is that the law of the land, the  
2 treaty?

3 MR. CHANDLER: The treaty is a part of the  
4 law.

5 MR. HARNEY: Okay. Okay. You guys better  
6 recognize that, because it's very important -- if we  
7 talk about law, how law works, let's abide by that,  
8 instead of making your own rules or regulations that  
9 you won't abide by.

10 MR. CAMERON: Okay. Thank you all. We're  
11 going to go into some specifics on the hearing process  
12 next with Dennis, but first we'll take a break. Be  
13 back around five after three -- give you 15 minutes to  
14 stretch your legs and get some fresh air. Thank you.

15 (Whereupon, the proceedings in the  
16 foregoing matter went off the record at  
17 2:50 p.m. and went back on the record at  
18 3:10 p.m.)

19 MR. CAMERON: Okay. Dennis, are you  
20 ready? All right. Well, let's go.

21 We have some questions. We're next going  
22 to go to Dennis Dambly, who is going to go through the  
23 specifics of the hearing process. And we'll make sure  
24 that we come back to some of these questions that were  
25 raised earlier, so we close those out.

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1 So, Dennis, go ahead.

2 MR. DAMBLY: All right. Am I talking  
3 close enough in here that you all can hear? Yes?  
4 Good.

5 My name is Dennis Dambly, and as has been  
6 mentioned previously it would be my staff who would be  
7 responsible for representing the NRC staff, should  
8 there be a hearing on a repository.

9 What I'd like to cover is a little more  
10 detail on the specifics of the hearing process that  
11 would be applied to any application for a geologic  
12 repository.

13 I do want to indicate that the rules that  
14 will be followed are not new, with one exception that  
15 I'll be getting to fairly quickly. They are the same  
16 rules that have been followed for many years by the  
17 Commission in licensing reactors. It's not a new  
18 process. It's not new rules that were made up  
19 specifically, with the exception of the Subpart J  
20 language that deals with the licensing support.

21 Okay. The first two slides that I would  
22 like to deal with is to give you an overall timeline.  
23 I was looking at a slide, and I saw the right side  
24 going -- she'll fix it. It's magic.

25 The first slide deals with things that

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1 happen before DOE files an application. Under the new  
2 rules that have recently been adopted and will be  
3 published I think next week in the Federal Register  
4 dealing with the timing for certification, for  
5 compliance with our licensing support network, DOE has  
6 to certify -- they put all of their documents online,  
7 the licensing support network, at least six months  
8 before they file an application with the agency.

9 So six months before they can send in an  
10 application, all of their documents have to be up and  
11 available to the public, all the parties, and  
12 potential parties.

13 One month after they do that, the NRC has  
14 to have all its documents up and online as part of the  
15 licensing support network. Three months or 90 days  
16 after DOE certifies all of its documents are up, any  
17 other parties or potential parties, anyone who is  
18 interested in being a party in the repository hearing  
19 would have to certify that they put all of their  
20 documents up as part of the licensing support network.  
21 And I'll talk about that a little more in a minute.

22 So this is the timeline before an  
23 application would come in, and only what I would call  
24 the hearing timeline, because Bill and Larry have  
25 already talked about the whole timeline of going

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1 through the President and the Congress and those  
2 steps.

3 We're talking if the Congress is approved  
4 and DOE decides to file an application, this is what  
5 happens before they file it that would be part of the  
6 hearing process.

7 And the next slide deals with -- actually,  
8 I guess it's the next two slides -- okay -- deal with  
9 the more traditional timelines that would apply to a  
10 -- to any NRC formal hearing. But there is a specific  
11 subpart or Part 2, Appendix D, that Larry talked about  
12 that has a very detailed schedule. And it's set out  
13 in terms of number of days from the date that we  
14 docket an application that a lot of things have to  
15 take place.

16 I have distilled them down to the big  
17 ones, the important ones, and you'll see there are  
18 approximate dates on the second slide. The first one  
19 we're doing just for a day, so it comes right off of  
20 Appendix D.

21 The next slide that we'll deal with -- in  
22 the appendix, as I said, things are specifically set  
23 forth in numbers of days. But it's not going to help  
24 you or me much to say it's 262 days from such and  
25 such, so we made it approximately so many months, so

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1 you have an idea of what the timeline is.

2 Okay. The first thing -- when DOE -- as  
3 Bill has said, if and when they submit an application,  
4 the staff has 90 days to do an acceptance review.  
5 Once they do that, they would publish a public notice  
6 of a hearing. From that period, you have 30 days if  
7 you want to intervene. That's the first thing -- to  
8 come in, file your petition, meet the requirements.

9 Within 100 days, there's a pre-hearing  
10 conference, and at that conference the Board will talk  
11 more about that, would consider, and ultimately after  
12 that make a decision on who gets to intervene and be  
13 a party and who doesn't, and what contentions would be  
14 admitted and which aren't. And I will talk to that.

15 All of these -- I just want to give you a  
16 general time sequence here. Once there's a  
17 determination who the parties are we get into  
18 discovery. I want to talk to you about discovery.  
19 Look at the next -- the safety evaluation report that  
20 the staff does will be completed about 18 months after  
21 the application is docketed. There's, again, a number  
22 of days, but 18 months is the approximate date.

23 It's important -- maybe I'll mention this  
24 now, and I'll mention it again -- to understand from  
25 that, if you want to intervene, you can't wait for the

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1 staff to complete its review before you decide what  
2 you want to contest. As you can see, you have 30 days  
3 after the notice to file your petition. And the staff  
4 is not going to be done with its review for 18 months.

5 So if you wait 18 months, you're going to  
6 be a little late on 30 days. But we'll talk about  
7 that.

8 The hearing is now scheduled to begin in  
9 two years under the present appendix schedule,  
10 approximately two years after an application is  
11 docketed, with an initial decision about 32 months  
12 after that, and the Commission's decision -- initial  
13 decision -- three years after the notice. And that's  
14 a statutory requirement.

15 Now to talk about the specific phases.  
16 This is the phase that is really unique in terms of  
17 NRC precedent for a large, complex hearing. We really  
18 did not have, prior to this, a pre-application -- a  
19 pre-license application phase. There is a specific  
20 part of the process now that deals with things that  
21 will happen when we receive an application.

22 The pre-application license phase starts  
23 30 days after DOE submits its site recommendation to  
24 the President. And in that phase, again, we're really  
25 talking here the licensing support network. And I

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1. know the staff was out here last year talking to  
2. everybody about what the licensing support network is.

3. Basically, it's a compilation online of  
4. everybody's documentary material that has to do with  
5. the proposed Yucca Mountain site. All of the records  
6. that DOE has, all of their documents, all of their  
7. engineering drawings, anything like that has to be put  
8. into the licensing support network.

9. And the purpose of that -- same with NRC,  
10. same with parties, or potential parties -- is to make  
11. everything open and available that was done to  
12. facilitate the process. Normally, one would not get  
13. access to all that material until you became an  
14. intervenor, got intervenor status and got into the  
15. discovery phase.

16. And much of the discovery phase would be  
17. focused on requesting documents. Give me all the  
18. documents you've got on this issue. Give me all the  
19. documents you have on that issue. That won't be  
20. necessary in this proceeding, because we will have  
21. established the licensing support network, or LSN,  
22. which is going to have that all there and available to  
23. everybody.

24. There is also in the pre license  
25. application phase, the second bullet that's up there,

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1 there will be a judge appointed from the Atomic Safety  
2 and Licensing Board to hear disputes about what's in  
3 or not in the licensing support network.

4 As a quick example of the kinds of things,  
5 suppose NRC or DOE certified that we had complied with  
6 our requirements. Say, NRC certified that we complied  
7 with its requirements, put all of those documents on  
8 Yucca Mountain, proposed repository, in a licensing  
9 support network. And you checked it out, and they  
10 have 15 documents in there.

11 You would have the right to go to the pre-  
12 license application presiding officer and say, "Excuse  
13 me, Judge, but I don't think 15 is a good number.  
14 Maybe 15,000, but 15 is not the right number. Issue  
15 an order. Tell them to put the rest of the stuff in."

16 And that could be done by potential  
17 parties. You won't ever have party status. Anybody  
18 could come forward say, "I'm a potential party, and I  
19 want to raise that issue." I would expect that much  
20 of the issues pertaining at this phase that a -- the  
21 presiding officer would deal with would be issues of  
22 privilege.

23 Somebody would say, in the licensing  
24 support network, will you have to put on bibliographic  
25 data, headers if you will, to identify documents which

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1 you say, "I'm not putting online because they're  
2 privileged" -- attorney-client privilege, contains  
3 proprietary information, and could be -- potentially,  
4 I guess there could be classified information,  
5 safeguards information, things like that.

6 You start to identify the documents, and  
7 other parties or potential parties could come to the  
8 judge and say, "I don't think those are properly  
9 privilege," and a judge would then make a ruling and  
10 could order that they be made available to everybody,  
11 could issue an order that says, you know, you've got  
12 to sign some kind of an agreement for access, could  
13 condition access to certain things, but it's all up to  
14 this phase.

15 And you wouldn't have this phase in any  
16 other proceeding. We don't have a judge that rules on  
17 things before there's an even an application. This is  
18 special to a repository proceeding, and it's done to  
19 facilitate getting the information out and on the  
20 record for everybody to have access to it.

21 Now, in the -- next one, please.

22 There's a list of duties that any  
23 potential parties or the NRC or DOE have to do in  
24 regard to the licensing support network.

25 We've already covered this slide. I'm



1       sorry. Next one.

2               And they're listed on here, the things  
3       that you would have to do. The important slide is the  
4       one after this one.

5               If you want to be granted party status in  
6       the hearing itself, you have to have substantially  
7       complied timely with the requirements for the  
8       licensing support network. So if you think you want  
9       to participate in the hearing, you want to become an  
10      intervenor, you have to make sure that within 90 days  
11      of DOE certifying that they have up and online as part  
12      of the licensing support network all of their  
13      material, that you've got yours up. Otherwise, there  
14      are some other hurdles you would have to go through.

15              So if you think you're going to be  
16      interested in being involved, make sure that you take  
17      the time -- and it may not be that there's that many  
18      documents. There's an awful lot of people who maybe  
19      want to get involved, and the documents that they will  
20      say that they will use may be stuff that DOE puts  
21      online.

22              Could be the stuff that NRC puts online.  
23      It may be two or three or four reports that you have,  
24      but it's only the material that you intend to use, not  
25      DOE or NRC would have to put everything on there, but

1 for you -- stuff that you would plan to use in any  
2 hearing you would have to put online if it's not  
3 either a DOE or an NRC document or somebody else's  
4 document that they're going to put on.

5 Now we'll get into the traditional pre-  
6 hearing activities that are -- again, NRC has been  
7 using since its inception, and I'm sure were passed on  
8 from the Atomic Energy Commission and really applied  
9 to proceedings from 43 or 50 years ago.

10 The first thing -- and everybody has  
11 mentioned it, Bill has mentioned it, Larry has  
12 mentioned it -- there will be a notice of the hearing  
13 and an opportunity to intervene published. It will be  
14 published in the Federal Register. It will be placed  
15 on the NRC website. There will be press releases.

16 I'm sure Bill and his staff will make sure  
17 that it's provided to all the counties, all of the  
18 local media. There is virtually no way that if you're  
19 interested you won't know that an application has been  
20 received and docketed.

21 At that point, they will explain what you  
22 need to do to petition to intervene, and we'll get  
23 into a little bit more about what that is in a second.  
24 There will also be an Atomic Safety and Licensing  
25 Board established at that time, and from then on they

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1 are in control of the hearing process with a three-  
2 judge panel.

3 They will hold pre-hearing conferences.  
4 One of the first ones will be to decide who gets to  
5 intervene and who doesn't. They'll set up discovery  
6 schedules, timelines, make sure everybody complies  
7 with the schedules that are set forth in Appendix D.

8 But going now back to the notice of  
9 receipt of an application. The important thing there  
10 is you've got 30 days to file from the date that  
11 that's published if you want to intervene and be a  
12 party in the proceeding. If you miss the 30 days,  
13 then you've got additional hurdles to get admitted  
14 late, and it's possible you might not get in.

15 But the thing to remember, 30 days is a  
16 short time. It's also -- the 30 days will be before  
17 the staff is done. So if you have issues you want  
18 raised you have to base those on DOE's application.  
19 You don't base your issues on NRC's review. That  
20 won't be done in that 30-day period.

21 And while 30 days is short, remember what  
22 we talked about a little while ago, DOE has to have  
23 all of their documents online six months before they  
24 submit the application, and that would be three months  
25 before -- there would be an additional three months

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1 before it's docketed.

2 So really nine months before this notice  
3 would come out DOE's material should be online and  
4 available to anybody.

5 So you can start, if you're seriously  
6 interested in intervening in a proceeding, that's the  
7 time to start preparing the issues you want resolved,  
8 start looking in the licensing support network. The  
9 NRC documents will be on there I guess eight months  
10 before, and other people are interested. I'm sure the  
11 states and the local government will have theirs up  
12 there. At that point, it would be six months before  
13 this notice goes out.

14 And, rather, those first states -- the six  
15 months before they submit, that's at least six months.  
16 If DOE wants to submit the stuff a year before -- I'm  
17 not suggesting they do -- but if they did, then if  
18 they did it 12 months before, the NRC would have to do  
19 it 11 months before, and other people would have to do  
20 it nine months before. Those dates are all based on  
21 when DOE certifies.

22 How do -- did somebody say, "How do you  
23 know that?"

24 AUDIENCE MEMBER: Yes.

25 MR. DAMBLY: They will certify, and we

1 will let the world know that DOE has made its  
2 certification, and that other people have to prepare  
3 to do theirs. But there won't be any secrets in any  
4 of this stuff in terms of timing.

5 Yes, sir?

6 MR. McCracken: Thank you. My name is  
7 Ralph McCracken. I'm about 15 kilometers from Yucca  
8 Mountain Range. It seems to me that it would be a  
9 little more appropriate in terms of the announcement  
10 that you would make, it should be made with -- pardon  
11 me. The date that the DOE finishes making their  
12 submissions should be announced with as much gusto as  
13 you plan for the initiation of your 30-day period.

14 MR. DAMBLY: If I understand you, what  
15 you're saying is when DOE submits an application, we  
16 should go.

17 MR. McCracken: No.

18 MR. DAMBLY: Okay. What date are you --

19 MR. McCracken: When they finish  
20 submitting all of their information, and it has to be  
21 submitted six months in advance --

22 MR. DAMBLY: Oh, the licensing support  
23 network's recommendation.

24 MR. McCracken: Right.

25 MR. DAMBLY: Okay.

1 MR. MCCracken: At that point in time, it  
2 seems to me there should be as much energy put into  
3 making the public, the governmental committees, and  
4 other committees aware that they have done this, that  
5 you make as much effort with that as you're going to  
6 make at announcing that particular 30 days that you're  
7 making a big deal about.

8 MR. Dambly: I think that's right, and I'm  
9 sure we will do that. I'm not worried, quite frankly,  
10 that the state and local government units are not  
11 going to know, because I'm sure they will know very  
12 well. But, yes, we do need to make sure the public --  
13 because, again, it's important for you to start  
14 preparing. That's why we're putting the documents out  
15 there, and our intention is not to hide.

16 There's no formal requirement that I'm  
17 aware of, but I'm sure Bill and his staff and our  
18 Public Affairs folks will be happy to send out all the  
19 notices and the press releases.

20 MR. CAMERON: We'll make a notice and  
21 follow up. And, Dennis, any time you get to a point  
22 where you think it's logical to take a break, then  
23 we'll open it up for questions, because otherwise I  
24 don't think you'll get done.

25 MR. Dambly: Okay.

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1 MR. CAMERON: So whenever you want to  
2 break for questions, we'll do that.

3 MR. DAMBLY: Okay. Again, you have the 30  
4 days to file. It's important you start long before  
5 that 30 days if you're interested.

6 And what do you have to do to intervene?  
7 You've got to file a petition, and in that petition  
8 you've got to establish two things. One, that you  
9 have an interest that's going to be adversely affected  
10 by the proceeding or by -- not the proceeding, I'm  
11 sorry, but by the -- building a repository. Okay.

12 Hopefully, you won't be -- have an  
13 interest that's adversely affected by the proceeding  
14 itself in terms of how the proceeding goes. But --

15 (Laughter.)

16 And you have to come up with one or more  
17 contentions, and a contention is simply an issue which  
18 you dispute which DOE has submitted in their  
19 application, factually -- say, they do not meet the  
20 standards that will be issued by the agency that will  
21 be applicable to a repository.

22 So you go through their application and,  
23 you know, just look at -- suppose the application --  
24 or suppose our regulations say that you have to have  
25 three widgets in a certain area. And you look through

1 what they submit; and they say, "We're going to have  
2 two." Well, that would be a valid contention. You  
3 could just look at the application and say, "They're  
4 not complying with the regulations."

5 More likely than not, there are going to  
6 be a lot more detailed engineering kinds of judgments  
7 to be made than safety things, and legal issues that  
8 we've heard already today about certain legal issues  
9 on who owns the property. That would be a valid  
10 contention, if you could say they do not have control  
11 over where they're building it. That would be a valid  
12 contention.

13 Now, the first thing we talked about is an  
14 interest that would be adversely affected. This is  
15 called "standing." To get standing -- there are going  
16 to be two groups of people, and I guess this came up  
17 earlier and I'll talk about it. The affected units of  
18 local government, affected Indian tribes in the State  
19 of Nevada, basically have standing by virtue of our  
20 regulations.

21 They don't have to show interest that's  
22 adversely affected. If you're in those groups, you've  
23 already got standing. You would file contentions, but  
24 you don't have to get to the standing stage. Everyone  
25 else has to show how they are personally going to be

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1 adversely affected or impacted.

2 It's harm to yourself. It's not harm --  
3 not harm to third persons. And it's got to be  
4 distinct, concrete, and not some speculation that,  
5 well, maybe something or other. You have to come  
6 forth that there's some specific way in which a  
7 government repository is going to adversely affect  
8 you.

9 That's standing. That gets you in to say,  
10 "Okay. Now you can file contentions." Contentions,  
11 as Larry said, are not limited to standing. I mean,  
12 for example, if you're farming by Yucca Mountain, and  
13 you've got standing because you posited that somehow  
14 Yucca Mountain was going to adversely impact your  
15 farm, you know, radiation-wise, you could raise any  
16 contention. You can raise any issue, if you have  
17 standing to raise it, as to why that application  
18 shouldn't be granted.

19 Okay. Again, another issue on standing --  
20 organizations. Two ways organizations can have  
21 standing. They could show a harm to their  
22 organizational interest. Generally, that would mean  
23 if they own property in the area, the organization  
24 owns property, they could raise standing individually.

25 The other, and the one that is -- as far

1 as I know, the only one that has ever been used in the  
2 NRC proceeding is an organization -- we'll take, for  
3 example, the Sierra Club wants to get involved in  
4 this. I don't know if they do -- it's just an  
5 example, a hypothetical. And you're a member of the  
6 Sierra Club, and you farm 15 kilometers from Yucca  
7 Mountain.

8 And they could mean you as the petitioner  
9 on which they will base their standard. You're a  
10 member. You individually would have standing. The  
11 Sierra Club could piggyback on that and come in as a  
12 party, and then represent you. Okay.

13 This slide is about -- the general  
14 concerns about the safety of the repository are not  
15 sufficient to get you standing. They wouldn't be  
16 sufficient to be a contention either. You just can't  
17 say, "I don't think it's going to be safe, and I don't  
18 like it." That won't be sufficient. You can say, "I  
19 live in Maine. I have a friend who has lived in  
20 Nevada, and so I want to come in and" -- you know,  
21 that's not a harm to you. That's not specific.

22 Contention -- again, that's a legal or  
23 factual dispute with DOE and a failure to comply with  
24 the rules, regulations, and statutes. You've got to  
25 make -- it's got to be specific. It can't be just

1 that it's not safe, and I don't like it. Again, the  
2 example I used before, it says you've got to have  
3 three widgets, they only have two. That's specific.

4 You have to also support it with documents  
5 or expert opinions. Hence, you can look through the  
6 licensing support network and see if there's documents  
7 out there that you're aware of, reports that are  
8 contrary, whatever, but you've got to come up with  
9 something. You can't just say, "I don't think it's  
10 safe, and I don't think they did this right." You  
11 have to be able to show what basis you would have for  
12 saying that.

13 It's got to be a significant issue, I  
14 think. The other day we talked about -- made a  
15 reference, for example, if somebody said, "Well, point  
16 to the regulations the -- the trucks at Yucca Mountain  
17 are supposed to be red, and they're yellow." Well, I  
18 don't know that we would have a regulation like that.

19 But if it was something that was that  
20 insignificant, the fact that you prevailed on that in  
21 a hearing is not going to have an impact on whether or  
22 not there will be a license issued or not. So it's  
23 got to be something that would affect the outcome of  
24 the proceeding, potentially affect the outcome of the  
25 proceeding.

1           Okay. Intervenor -- it's an individual  
2 organization that shows it's got standing, and has got  
3 to file an admissible contention. And, again, the  
4 Licensing Board, not the NRC staff, will make a  
5 decision on whether or not you have standing and/or an  
6 admissible contention. That's up to the Board. It's  
7 not up to DOE. It's not up to NRC.

8           Once the board says you've met the  
9 standing requirements and they've admitted at least  
10 one contention, they'll issue an order and you will  
11 get full party status, have the same rights as  
12 everybody else. At that point, we get to discovery.  
13 And, again, in this proceeding it's highly unusual.  
14 And as I said previously, generally, discovery in NRC  
15 proceedings, and probably in most litigation, a lot of  
16 it is about documents.

17           In this particular case there should be no  
18 document discovery necessary, because it should all be  
19 up online as part of the licensing support network.  
20 So there should not be a need for you to ask questions  
21 about, give me your documents pertaining to such and  
22 such. And if you have those questions, they should be  
23 asked at the pre-license application judge phase to  
24 make sure that it's all up there and online when it's  
25 needed.

1           So in this particular case, the real  
2       discovery -- the formal discovery is after party  
3       status. However, the real discovery is the licensing  
4       support network. But in the formal hearing process,  
5       you can use one of two tools -- interrogatories, and  
6       interrogatories are basically you write a list of  
7       questions, and then you send them to another party.  
8       And please, DOE, explain to me how you plan to  
9       accomplish this consistent with that. And they have  
10      to respond back.

11           The other method of discovery you can use  
12      is what's called depositions. And a deposition is  
13      somewhat like a hearing, in that you notify -- and  
14      there's a process to do it -- an individual that you  
15      want to take their statement and you do it by putting  
16      them under oath on the record with a transcriber.  
17      They raise their right hand, they swear to tell the  
18      truth, and then you ask questions just like you would  
19      at a hearing, and they have to answer them under oath  
20      and on the record.

21           Other parties also get to ask questions  
22      and examine and cross examine. As many parties as  
23      there are can ask -- can participate and ask  
24      questions. And this is another way -- and this  
25      particular proceeding, and probably in most NRC

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1 proceedings, normally depositions would involve  
2 experts, where you're trying to find out the basis  
3 that John Doe is saying that this is the way it is.

4 And one reason you use a deposition is so  
5 when you ask them a question under oath and on the  
6 record, and they say, "Yes, this is -- you know, my  
7 opinion is based on X, Y, Z," well, then, if you get  
8 to the hearing and they say it's based on A, B, C, you  
9 go, "Excuse me. You told me it's based on X, Y, Z."  
10 And it's used to undermine credibility.

11 Okay. Evidentiary hearing -- I think as  
12 Larry indicated earlier, there could be two or more  
13 boards established in this proceeding. I don't know  
14 if there will be, but it's possible. But in any  
15 event, in each one of them, whether it's one or two or  
16 three, the hearing itself will be pretty much like any  
17 trial you've seen if you've done jury duty or watched  
18 television, Court TV, or any of the numerous shows.

19 All of the parties will put on witnesses,  
20 submit documentary evidence. Other parties get to  
21 cross examine witnesses, and it's in front of a three-  
22 judge panel from the Licensing Board who will  
23 ultimately make a decision based on what's submitted  
24 as part of the record.

25 You can attack qualifications of experts.

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1 If somebody claims to be the world's foremost  
2 authority on something, and they don't really have the  
3 background for that, you could challenge that and  
4 their testimony may not be allowed. That's up to the  
5 Board. The Board makes all these decisions, not the  
6 staff, not DOE. It's the judges.

7 In any hearing, DOE will have the burden  
8 of proof. It's up to DOE to establish that the  
9 repository that will be constructed will meet all of  
10 the requirements of the rules, statutes, regulations,  
11 and will protect the public health and safety. That's  
12 their burden. It is not the NRC staff's burden. It  
13 is not an intervenor's burden.

14 DOE has to make sure if they want an  
15 application granted that the record supports that they  
16 fully comply with everything. And if you're an  
17 intervenor and you've got three or four or 300 or 400  
18 issues that you want dealt with, it's up to you to  
19 move those along.

20 You have to put in evidence to explain why  
21 those are valid issues and why you should be believed  
22 or your evidence should be accepted and the  
23 application should be denied. But DOE ultimately  
24 still has the burden of proving that they're right and  
25 you're wrong.

1           If testimony is rejected or exhibits are  
2 rejected by the Board because either the witness isn't  
3 qualified to testify, the proposed exhibits are not  
4 relevant to the proceeding, they don't become part of  
5 the record and a decision can't be based on rejected  
6 testimony or rejected evidence. It's got to be based  
7 on just what ultimately ends up in the record.

8           After the hearing, the Licensing Board  
9 will issue an initial decision. They will make  
10 findings of fact and conclusions of law about every  
11 single contested issue that was before them. And when  
12 they finish making all of those findings they will  
13 make the ultimate finding as to whether or not the  
14 construction authorization should be issued, denied,  
15 or issued with additional conditions.

16           And I guess we can let Larry talk about  
17 the appeal before we take all of the questions.

18           MR. CAMERON: Okay.

19           MR. DAMBLY: Because it's a very short  
20 area to deal with.

21           MR. CAMERON: And at some point we still  
22 have one issue here outstanding -- the role of the  
23 environmental impact statement in the hearing process.

24           MR. DAMBLY: I'll cover that. The one  
25 thing that I did mean to mention about the

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1 environmental impact statement -- and I think Bill and  
2 Larry both mentioned that under the statute and under  
3 our rules NRC has to adopt the DOE environmental  
4 impact statement if it's practicable to do that.

5 And it's defined both in the statute and  
6 in our regs to mean it's practical if the facility  
7 that was evaluated by DOE in their environmental  
8 impact statement is substantially the same one that  
9 they're proposing in the application to build, and if  
10 there's not any new and significantly different  
11 environmental information.

12 If those are the case, then we have to  
13 adopt the EIS from DOE, and environmental issues  
14 cannot be brought into the hearing. But you may --  
15 it's in our Part 5151.109 -- you can challenge the  
16 staff's conclusion that it was practical to adopt the  
17 DOE EIS. That is a contention that can be brought  
18 into the hearing.

19 So if you think -- if the NRC staff says,  
20 "Yes, we're taking their environmental impact  
21 statement wholeheartedly, we're not doing anything  
22 else, the environmental stuff is off limits, you can  
23 raise a contention that that's not appropriate under  
24 those two standards." And that would be a contention  
25 that the board would have to deal with in the

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1 proceeding.

2 And if it found you were correct, then,  
3 you know, the whole environmental issue becomes the  
4 subject of review. Okay.

5 MR. CAMERON: Okay. Thanks, Dennis.

6 Larry, can you give us a brief exposition  
7 on the appeals process? And then we'll open it up for  
8 questions on all these subjects.

9 MR. CHANDLER: Sure. I'll try to make it  
10 as brief as possible. Perhaps it should be really  
11 referred to as the review process, because in terms of  
12 both appeals and decisions as well as Commission  
13 review during the process, there are certain specific  
14 opportunities that the parties have to ask the  
15 Commission to involve and decide matters before the  
16 decision of the Board is issued.

17 For example, if a specific opportunity is  
18 provided to appeal the pre-hearing conference order  
19 which would rule on the admission of parties -- that  
20 is, whether someone has established standing or  
21 whether someone has submitted contentions -- those are  
22 specifically provided for in the Commission's  
23 regulations. And the Commission will provide the  
24 standings and entertain an appeal of those decisions.

25 In addition to those opportunities, the

1. presiding board may believe that one of the issues  
2. raised is sufficient enough and complex that it  
3. warrants the Commission's review at that point in time  
4. before the process winds its way to a conclusion.

5. And they could certify a question to the  
6. Board and ask -- to the Commission and ask the  
7. Commission for it to resolve a particular issue and  
8. provide guidance to the Board on how the matter should  
9. be handed in the hearing itself.

10. Parties also have an opportunity to ask  
11. the Board to refer a question to the Commission. It's  
12. much the same kind of a matter. Those opportunities  
13. -- those actions are rarely granted. Typically, the  
14. Commission will await the ultimate decision by a  
15. licensing board before it involves itself.

16. But if the issues are of sufficient  
17. importance, truly novel and complex issues, issues of  
18. first impression, the party may be able to persuade  
19. the board to refer a matter or the board itself may  
20. believe it warrants Commission involvement at that  
21. point in time.

22. There are truly high thresholds, though,  
23. for interlocutory reviews. Interlocutory reviews are  
24. views sort of midway in the process before the  
25. decision -- the Licensing Board's decision has been

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1 issued.

2 In terms of appeal, the decision of the  
3 Board, the initial decision that Dennis referred to,  
4 can be appealed to the Commission within 40 days. And  
5 with respect to any of these matters, the issues that  
6 I talked about in my overview, as well as what Dennis  
7 has covered, parties need to bear in mind that if  
8 someone files a plea -- a motion -- a request to the  
9 Board, or to the Commission for that matter, for a  
10 certain action to be taken, all of the parties have an  
11 opportunity to respond.

12 It is truly, truly a rare, rare exception  
13 that the decisionmaker would rule without hearing from  
14 all of the affected parties on a given issue. So  
15 parties do have a right to respond.

16 Now, Commission review also takes on  
17 another context. What Dennis was referring to earlier  
18 in terms of the initial decision and what I mentioned  
19 briefly in passing as well is that the  
20 responsibility of the Atomic Safety and Licensing  
21 Board is to issue an initial decision, decide matters  
22 in controversy.

23 The Board will issue an initial decision,  
24 make its decision only on those matters that are  
25 raised in the contentions by the parties that have

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1 been accepted in the proceeding. There would likely  
2 be a lot of issues that the Licensing Board itself  
3 will not decide.

4 Those matters still have to be decided by  
5 the staff as part of its review, and the Commission  
6 then has the responsibility before it authorizes the  
7 Director of the Office of Nuclear Material Safety and  
8 Safeguards, the office that Bill Reamer works in,  
9 before the Commission authorizes the Director of that  
10 office to issue a construction authorization, the  
11 Commission would have to satisfy itself that with  
12 respect to the contested issues there is no basis to  
13 doubt the repository would be constructed and operated  
14 safely, or that the Commission should take action to  
15 suspend or otherwise condition the authorization or  
16 license.

17 Again, that review and those findings have  
18 to be made by the Commission, both with respect to the  
19 contested issues as well as uncontested issues. And,  
20 again, as we have repeatedly said, the Commission has  
21 the right to do one of three things. It can deny the  
22 application, it can grant the application, and it can  
23 grant the application subject to conditions, grant the  
24 application subject to conditions.

25 It actually has one other possible

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1 approach, and that is if there was some deficiency  
2 that it believed could be rectified with further  
3 action by one of the parties in the context of a  
4 hearing, it could remand the matter back to the Board.  
5 It could send the matter back to the Board for further  
6 action.

7 That essentially completes our comments.  
8 I hope we've had some success in explaining the  
9 process to you, taking some of the mystery out of it.

10 MR. CAMERON: Okay. Thanks. And thank  
11 you all for your patience. There is a lot of  
12 information there, and let's go for questions. Judy?

13 MS. TREICHEL: You may have taken way too  
14 much mystery out of it. When we look at this -- this  
15 is the first of a kind in the whole world, actually.  
16 But you're used to licensing reactors. If you make a  
17 mistake, you can turn the thing off. If there are a  
18 lot of people opposed and it goes through anyway,  
19 which I disapprove of, it still gets approved. But if  
20 it turns out they were right, you can turn it off and  
21 take it out.

22 This is very, very different. And you're  
23 dealing with at least three people that I've seen in  
24 this room. You're dealing with the Western Shoshoni,  
25 which not only are uniquely qualified to know about

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1 that area because they've always been there, but they  
2 certainly are experts.

3 You're dealing with the people who live in  
4 the Amargosa Valley who are experts in Amargosa Valley  
5 farming, livestock, all of that sort of thing, and  
6 you're dealing with the rest of us who know what  
7 that's about. And here we are, the only ones without  
8 standing going into this thing.

9 If we are just members of the public,  
10 unless first we win some money so that we can afford  
11 the legal help that we'll need, and the computer  
12 equipment that we'll need in order to play, and then  
13 we have to win the ultimate contest of being accepted  
14 as interviewers with standing -- and I know that we're  
15 never going to get over the hurdle about being --  
16 being speculative about our contentions.

17 This whole thing is built on DCE coming in  
18 with probabilistic models in which they're making  
19 guesses out over a period of 10,000 years. So  
20 everything they're telling you is speculative. There  
21 is no other repository you can go look at to see how  
22 it works.

23 Anything we say is going to be speculation  
24 that something will go wrong. And then we're going to  
25 be the ones who take the hits on being experts and

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1 being qualified. And it's not going to fly.

2 So we are left with the incredible  
3 position of possibly being the new participants in a  
4 guerilla war, where someone is attacking where we live  
5 and not giving us the basis to do anything. And I  
6 don't want to get into an argument about it. That's  
7 just the way I see it, and I want that on the record,  
8 because I think that's the boat we're in.

9 MR. CAMERON: Thank you, Judy.

10 Any comment?

11 MR. CHANDLER: Well, I have several  
12 comments. One, in terms of the significance of the  
13 licensing action, clearly, the repository is the first  
14 of a kind. I wouldn't suggest otherwise.

15 I would, however, suggest that there are  
16 -- there have been many licensing actions of great  
17 importance, and certain technical sophistication that  
18 has been considered and acted upon by the Commission.  
19 Reactor licensing, while more mature technology is  
20 still a very, very large responsibility, which the  
21 Commission takes very, very seriously, and it's -- as  
22 history has taught us painfully -- not always a simple  
23 question of turning off a reactor when there's a  
24 problem.

25 The Commission intends to exercise its



1 objective judgments in reviewing this, and I expect  
2 that individuals like yourself will have an  
3 opportunity to try and participate. I can't suggest  
4 to you today whether you would be successful or not be  
5 successful in establishing standing to participate.

6 You don't need a lawyer. During one of  
7 the breaks I was commenting to someone that there have  
8 been a number of proceedings in which lay individuals  
9 like yourselves have been very effective, active  
10 participants in a licensing proceeding with respect to  
11 any number of very large reactor facilities.

12 They've raised very serious questions,  
13 which have received very serious consideration by the  
14 Commission before a license is issued. I would expect  
15 it to be absolutely no different than in connection  
16 with this. They have succeeded with establishing  
17 standing. They have succeeded in meeting the  
18 Commission's thresholds for having contentions.

19 MR. CAMERON: Okay. Thanks.

20 MR. DAMBLY: Let me make one comment also  
21 on standing. The Commission's rules on standing, as  
22 they apply, are not something the Commission made up.  
23 They are the same rules that would be applied in any  
24 federal court litigation; the Supreme Court rules on  
25 standing.

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1 Any litigation in this nation requires  
2 standing. It's different than if this was, you know,  
3 a more, as Larry said, legislative kind of thing where  
4 there was a board up here and just everybody came in  
5 and made presentations, and then the board went away  
6 and did what it wanted to do.

7 This is formal litigation. In any formal  
8 litigation in this country you have to have standing.  
9 This is not an NRC-specific requirement.

10 MR. CAMERON: Okay. Thanks.

11 MS. TREICHEL: Under other formal  
12 litigation we would have read our rights and provided  
13 this.

14 MR. CAMERON: All right. We're going to  
15 go to three questions here, and then we're going to go  
16 to Mr. McGowan, and we're going to start right here.

17 MS. SARTIN: Jenney Sartin, Clark County.  
18 And if you gentlemen will humor me, please, I would  
19 greatly appreciate it. I do understand where the  
20 ultimate power is and the decisionmaking process lies.

21 But as you probably are aware, Finland, in  
22 their great wisdom, made the decision to include in  
23 their Nuclear Act, Nuclear Energy Act, the right of  
24 local veto power. And ultimately the decision was  
25 made to place a repository in that area. It also

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1 happened to be an area where there was already a  
2 nuclear waste powerplant.

3 In any case, I'm just curious -- perhaps  
4 you can enlighten me as to why a decision was not made  
5 to include local veto power.

6 MR. CHANDLER: Well, certainly the State  
7 of Nevada has an opportunity to express its views on  
8 the acceptability of the decision. The Commission's  
9 responsibility is a very, relatively speaking, narrow  
10 responsibility. We're charged by the Waste Policy Act  
11 with reviewing an application for a repository.

12 We are charged with establishing  
13 appropriate standards which will provide reasonable  
14 assurance of adequate protection of health and safety  
15 of the public that's involved. We're charged with the  
16 responsibility of reviewing the environmental issues  
17 as described earlier by Bill and Dennis to determine  
18 whether we're able to adopt the environmental impact  
19 statement prepared by the Department of Energy.

20 The ultimate decision on selection of a  
21 site -- siting of the facility is the responsibility  
22 of the Department of Energy. The public officials,  
23 members of Congress, have an opportunity to  
24 participate. Their elected representatives have an  
25 opportunity to participate in that process as well.

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1 Our role is confined to objectively and  
2 independently assessing whether that facility that is  
3 proposed will comply with the standards that the  
4 agency has established.

5 MR. CAMERON: Okay. Thank you.

6 Dennis?

7 MR. BECHTEL: Dennis Bechtel. I've got a  
8 question about -- you had indicated that intervention  
9 is based on Department of Energy's application. I'm  
10 sorry. Yes. Intervention would be considered by NRC  
11 based on DOE's application, right?

12 MR. DAMBLY: I said that --

13 MR. BECHTEL: License application.

14 MR. DAMBLY: -- you need to look at DOE's  
15 application and point out what -- where their  
16 application is deficient, either from a technical or  
17 a legal basis. You don't wait and say, "NRC did a  
18 lousy job of reviewing that, because that's not the  
19 basis for a contention." It has to be something wrong  
20 with DOE's application.

21 MR. BECHTEL: But the question I had was:  
22 the EIS is part of the application, right?

23 MR. DAMBLY: Except as you're well aware,  
24 and we've discussed, there are specific --

25 MR. BECHTEL: Yes.

1 MR. DAMBLY: -- statutory requirements  
2 that say we have to adopt it, and it's not part of the  
3 process. So that describes the limited way in which  
4 that can be dealt with in --

5 MR. BECHTEL: So once the EIS is accepted,  
6 it's off the table as part of the application?

7 MR. DAMBLY: Well, you could challenge in  
8 the hearing that we should not have adopted it,  
9 because it wasn't practical under the statute and  
10 under our regulations.

11 MR. BECHTEL: But the question -- I guess  
12 we would have to do that. Our concern is that our  
13 issues are not going to be addressed in the EIS. And  
14 that if it's your decision -- it's good to hear we  
15 have standing, but it -- your decision to determine  
16 whether we're an intervenor or not, based on something  
17 that's not there -- I mean, something we feel strongly  
18 about that perhaps is not in the EIS.

19 I guess my concern is that, you know,  
20 we're going to get knocked out of the box here  
21 without, you know, being able to defend ourselves.

22 MR. CHANDLER: You do have an opportunity.  
23 Actually, it's just -- those who are given party  
24 status by regulation still have an obligation to  
25 submit contentions, and I would certainly -- to the

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1 extent the state would have issues to raise, or one of  
2 the other entities would have issues to raise  
3 regarding whether the adoption of the EIS was  
4 appropriate, would seek to raise those and articulate  
5 a basis for its contention that -- contention that it  
6 should have been adopted.

7           So those views would -- assuming you were  
8 able to articulate an acceptable contention -- and,  
9 again, we can't presume to judge that today -- the  
10 Board -- by the way, that is the Board, not the NRC  
11 staff, which determines whether to accept that. And  
12 if it's accepted; then there would be -- it would be  
13 considered in the hearing process.

14           MR. BECITEL: My concern is that, you  
15 know, it's good to know that we can submit a  
16 contention. But that the contention is considered  
17 less merit and not eliminate this -- some sort of  
18 process. It's --

19           MR. CHANDLER: Point taken. All I can  
20 suggest is that at the appropriate time that anyone  
21 who participates, give it your best shot. I mean,  
22 that's the simplest way. I mean, you need to set out  
23 whatever reasons that you have for articulating your  
24 contention.

25           The board -- again, DOE will respond to

1 your contention. We will respond to your contention.  
2 And we may or may not agree that it's an acceptable  
3 contention.

4 Ultimately, the board is going to decide,  
5 and the board has -- we agree with the staff in some  
6 instances, and we disagree with the staff in some  
7 instances. We don't universally oppose contentions.  
8 We don't universally support contentions. We try to  
9 fairly -- look at them fairly, and on their merits,  
10 and take a position in support of or in opposition to  
11 case -- on a case-by-case basis.

12 MR. CAMERON: Thank you, Dennis.

13 We're going to go Abby Johnson, and then  
14 we'll go up to the front to Mr. McGowan. Abby?

15 MS. JOHNSON: Abby Johnson, Eureka County.  
16 You touched a raw nerve when you said that the  
17 standing of the public is similar to any federal  
18 proceeding. It's just sort of business as usual. And  
19 my comment to that is that this project is not  
20 business as usual.

21 And my other comment is that I would like  
22 -- and I think a lot of the counties would like -- to  
23 have the NRC and its staff consider the ways that the  
24 public can be involved in the process, including  
25 having standing, if appropriate.

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1 And to say that it's the way it's been  
2 done since we exploded our first bomb, and it's the  
3 way it's been done in federal court, and these are the  
4 rules, for a project for which there are currently  
5 very few rules, and for which those that apply are  
6 being changed, that doesn't -- that's not a very  
7 convincing argument.

8 So the sort of flexibility that you're  
9 allowing the Department of Energy for its repository  
10 design I would argue could also be brought to the way  
11 the public is involved the licensing process, whether  
12 it's the public sitting back and watching it, trying  
13 to follow it, or whether it's more of a public like  
14 Judy Treichel representing a citizen action  
15 organization trying to -- to bring their unique issues  
16 to the table, or whether it's people from our county  
17 who are very concerned about this project and really  
18 want to know how they can participate. So that's my  
19 comment.

20 My question is: what's the deal with  
21 transportation and this license? Some of us counties  
22 where our primary impact is transportation, which was  
23 pretty much in order in the draft EIS -- so we might  
24 get standing, but what's your take on transportation  
25 and the extent to which it will be addressed by the

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1 Department of Energy in its application?

2 Because my understanding is that that's  
3 how we would -- if what you said, if you don't agree  
4 with something in the application that it can become  
5 a contention. Well, what about stuff that's not there  
6 at all that we think should be?

7 MR. DAMBLY: I'll let Bill address how he  
8 envisions transportation to be involved in their  
9 review.

10 MR. REAMER: Abby, it's fundamentally an  
11 environmental impact statement issue. It's not a  
12 safety issue. The safety issues that the staff will  
13 review -- there is a license application on this  
14 project related to the repository itself. It is not  
15 related to the transportation.

16 Transportation, however, is covered in the  
17 Department of Energy's draft environmental statement  
18 and will be in the final impact statement. And so to  
19 the extent that it is reviewed in our proceeding, it  
20 will be reviewed under the -- in connection with the  
21 environmental impact statement.

22 MR. CAMERON: Is there a second part to  
23 this answer?

24 MR. CHANDLER: To the extent it -- that  
25 someone challenged or would like to challenge the

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1 sufficiency or the basis upon which the staff adopts  
2 the EIS, you could seek to perhaps challenge it in  
3 that way. I mean, you're otherwise unable to  
4 establish standing.

5 The contention you may wish to advance to  
6 be considered is that adoption is appropriate because,  
7 and fill in the blank. I mean, the contention --  
8 again, you need to have some articulated basis for it.  
9 It's not going to be simply enough to say, "I don't  
10 like it because ..." There has to be some basis in  
11 fact offered for making that assertion that there's  
12 something -- some basis for suggesting that that  
13 requires standing.

14 MR. CAMERON: And if -- on Abby's first  
15 point, if someone in the public wanted to suggest to  
16 the Commission that standing concepts should be  
17 broadened, how would they go about doing that?

18 MR. CHANDLER: Well, a petition for  
19 rulemaking. You know, there are -- one of the things  
20 I recommended earlier in my comments is that the  
21 Commission published for comment a fairly substantial  
22 revision to its rules of practice. That includes the  
23 rules of practice generally applicable in Subpart G,  
24 and it to some extent applies to Subpart J, and across  
25 the board.

1           There is an opportunity for comment on  
2 those. That comment period will expire on  
3 September 14. If you're interested, I'm sure you can  
4 check. Actually, it's in the Federal Register.

5           MR. CAMERON: If you need a copy of this,  
6 we'll get you a copy.

7           MR. CHANDLER: I wasn't trying to be smart  
8 on that.

9           MR. CAMERON: All right. Let's go to Mr.  
10 -- there are some other questions. Let's go to Mr.  
11 McGowan at this point.

12           MR. MCGOWAN: I preface the question  
13 directly to specifically the two General Counsels,  
14 nobody else. The question is, what is the half life  
15 of BU239? A second question -- what is BU239?

16           PARTICIPANT: Plutonium 239.

17           MR. MCGOWAN: The bottom line on this is  
18 we're talking about standing. Are you qualified to  
19 address this issue? On those questions you are not.

20           I will now continue. Thank you.

21           There is no time and date certain deadline  
22 for the submission by DOE/OCRWM/YMPO of an application  
23 for the NRC licensing and approval of the construction  
24 and operation of an underground repository at Yucca  
25 Mountain, Nevada, or anywhere else on the planet.

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1           Why should the interested and affected  
2 public be limited to a finite term pursuant to  
3 participation in a pertinent open public hearing  
4 process and the submission of public comment?

5           What is the official NRC definition of the  
6 term "intervenor"? And how, if at all, does the term  
7 "intervenor" differ from the terms interested and  
8 affected member of the public, stakeholder, and/or  
9 citizen of, or person residing in the United States,  
10 and, according to whom, and on what factual or  
11 reasoning basis?

12           Finally, this is an audience, not a  
13 meeting. The Pope grants an audience. The Nabob of  
14 Hyderabad grants an audience. But this is not Vatican  
15 City or Hyderabad. It's the United States of America,  
16 where public participation in the democratic process  
17 is categorically imperative to the preservation of our  
18 form of government which is republican democracy, not  
19 government by fiat.

20           Finally, again, we are not the NRC's  
21 public. You are the public's NRC. the public is the  
22 paymaster, and you can and will be held accountable,  
23 responsible, and liable for your acts and omissions,  
24 in accordance with applicable law.

25           And I'm not kidding one bit. Thank you

1 very much.

2 MR. CAMERON: Good suggestions.  
3 Absolutely.

4 Let's go to Kalynda and the up to Susi.  
5 Kalynda?

6 MS. TILGES: Thank you. In all fairness  
7 -- Kalynda Tilges, Citizen Alert. In all fairness,  
8 Tom, there were sweet rolls and coffee from last  
9 night, and I missed the opportunity to tell you all  
10 thank you. It was much appreciated.

11 PARTICIPANT: Actually, I'm told there  
12 were refreshments here today, but --

13 PARTICIPANT: There are refreshments in  
14 there for after the meeting, and Clark County was more  
15 than happy to provide them.

16 (Laughter.)

17 MS. TILGES: Thank you. I'm going to try  
18 and make this as succinct as possible, considering  
19 that I've sat through this same meeting twice and now  
20 I'm more confused than ever.

21 In talking about not speculative or  
22 remote, I guess I can only go back on what Judy said.  
23 The whole thing is speculative and remote, and how can  
24 we -- because it hasn't happened yet anywhere, we  
25 can't say that it's definite. We can have it thrown

1 back in our face by DOE's unlicensed engineers, and  
2 NRC's unlicensed engineers, but we're not  
3 professionals, even though we are also unlicensed.

4 Question I guess -- I still have a  
5 problem, and this doesn't necessarily require an  
6 answer, with the electronic -- with the electronic  
7 docket, hearing docket being the official record.

8 Especially since this is still in the  
9 planning stages, it really concerns me that in rural  
10 areas, and people who don't have access to large  
11 amounts of technology or even mediocre amounts of  
12 technology, are going to be able to access this or  
13 become a part of it. This is not democracy.

14 I'd like to see -- is there any provision,  
15 is there any way that this could be changed  
16 considering it's still in the planning stages? That's  
17 one question.

18 And also, I'm a little confused when you  
19 talk about -- and I guess I'm so confused I'm not sure  
20 exactly how to ask the question.

21 (Laughter.)

22 Is this whole -- the whole process you're  
23 talking about, is this going to happen -- you talk  
24 about a step-wise licensing process, where first there  
25 would be licensing for building of the repository, and

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1 then licensing for the operation, and then license --  
2 or placement, whichever comes first.

3 So do we go through this whole process  
4 each time in the licensing, or does this one licensing  
5 period cover all of that with the LSN and the  
6 intervenors and all of that? Do we go through it each  
7 time?

8 And there was also reference made to how  
9 this might be comparable to, say Judge Judy or Judge  
10 Wagner, which brings up the question, is this thing  
11 going to be televised?

12 MR. DAMBLY: I don't know if it will be  
13 televised. I don't know that the Commission would  
14 have an objection to it being televised if somebody  
15 wanted to.

16 Now, to answer your previous question,  
17 which I did want to address --

18 MR. CAMERON: Step-wise.

19 MR. DAMBLY: Oh, the step-wise. Okay.  
20 Actually, under the regulations, there would be the  
21 potential for two hearings -- one for construction  
22 authorization and a second hearing for an operating  
23 license if you will.

24 MS. TILGES: Potential, you said? You're  
25 not sure.

1 MR. DAMBLY: Well, I mean, the whole thing  
2 is potentially -- if they give construction  
3 authorization, go through all the steps, they come  
4 through, and we'll say the agency issues a  
5 construction authorization, then there will be a  
6 second stage in which there will be another hearing.

7 MR. CAMERON: And you would -- just  
8 because you were a party or an intervenor in the first  
9 hearing wouldn't necessarily automatically bring you  
10 into the second hearing. I mean, you may not even  
11 live here at that point, or be close to the plant, or,  
12 you know --

13 MR. DAMBLY: You would have to establish  
14 standing again.

15 MR. CAMERON: Let's go to Susi and then  
16 see if there's other questions and check back in with  
17 Kalynda.

18 MS. SNYDER: Thank you. I like to stand  
19 up because I'm tall, and it makes me feel powerful.

20 (Laughter.)

21 All right. Anyway --

22 MR. CAMERON: She wants a yes or no  
23 answer.

24 (Laughter.)

25 Maybe.



1 (Laughter.)

2 MS. SNYDER: Thank you. I have a question  
3 kind of building on what Kalynda was saying. Will  
4 there be a trial run on the licensing support network?

5 MR. DAMBLY: Well, it will certainly be  
6 tested. I don't know what you mean by "trial run."  
7 Will it be used in another hearing? I don't know that  
8 there's any plan for that to specifically happen.

9 MR. CHANDLER: There is a requirement that  
10 training be provided.

11 MS. SNYDER: Okay. So there's a  
12 requirement that training be provided. That's very  
13 good. Thank you. What?

14 MS. TILGES: Training provided to whom?

15 MS. SNYDER: Yes. Training provided to  
16 whom?

17 MR. DAMBLY: Potential parties.

18 MS. SNYDER: To potential parties. So if  
19 we wanted training, we'd contact you. All right.

20 MR. DAMBLY: Not me personally, but --

21 MS. SNYDER: All right. I know you guys  
22 are really tired. I can tell.

23 The reason I ask that is because there is  
24 another NRC system that's called ADAMS. And ADAMS --  
25 I mean, other than -- so you guys obviously are

1 somewhat familiar with ADAMS, and it's really hard to  
2 use, especially if you don't have -- it's hard because  
3 the documents are not all of the same format, and it's  
4 hard for people to get around and use them, especially  
5 when you're like me.

6 I have a land line that if I'm lucky I can  
7 keep my connection for half an hour. You know, so it  
8 is -- it's very difficult. And so I just want to make  
9 sure that you're taking the best -- the precautions  
10 necessary to make the LSN a lot more accessible. I  
11 realize this is not you guys' area, but that's --

12 MR. CHANDLER: They are actively looking  
13 at formatting. Formatting issues will be addressed,  
14 at least to some extent, in the rulemaking -- the  
15 final rule that's coming out, or the rule that's  
16 coming out next week, to some extent. But the issue  
17 generally of formats and accessibility are --

18 MS. SNYDER: Okay. My last question is  
19 I'm looking for some free legal advice. And here's  
20 what I want to know. Looking at -- thinking about  
21 contentions, and right now I have control over this  
22 microphone. Does that mean I own it? DOE may have  
23 control over the area of Yucca Mountain, does that  
24 necessarily mean they own it? And that's my legal  
25 question. Does control prove ownership?

1 MR. CHANDLER: Not necessarily. Control  
2 does not necessarily equate with ownership, and  
3 ownership doesn't necessarily equate with control.

4 MR. CAMERON: Janet, did you want to talk  
5 about what's in the rule? Okay. Because that is  
6 relevant. Why don't you tell us quickly about that  
7 and then we'll go back.

8 MS. KOTRA: My name is Janet Kotra. I'm  
9 one of the co-authors of the proposed Part 63  
10 regulation. And both in the existing Part 60, as well  
11 as in the proposed Part 63, there is a provision that  
12 DOE would have to demonstrate a clear and unencumbered  
13 title to the land, ownership of the land. And so that  
14 would -- that is not the same as control.

15 I understand the distinction you were  
16 trying to make, but I want to assure you that the  
17 regulations would include a provision that the  
18 Department demonstrate ownership.

19 MR. CAMERON: We have a couple of people  
20 here, and then Steve. All right.

21 MR. PACKER: I'm going to start out, too.

22 (Laughter.)

23 I'm Jim Packer. My question has to do  
24 with the recently released supplemental EIS that says  
25 the DOE is going to build a repository, and that

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1 continues to evolve. I want to know, how do you  
2 license a repository that is evolving?

3 (Laughter.)

4 MR. CAMERON: And just -- they're pointing  
5 at you, Bill. I don't know if you noticed that,  
6 but --

7 (Laughter.)

8 Is it clear to you what the -- have you  
9 heard this? Do you understand the statement "continue  
10 to evolve"?

11 MR. REAMER: I have heard it in the past,  
12 and I think this is a continuation of the question  
13 that the Department of Energy talks about a flexible  
14 design and alternative designs. How does the  
15 Commission license a flexible design? How does the  
16 Commission license alternative designs? Is that the  
17 thrust of the question that you're asking?

18 MR. PACKER: Well, I guess what I'm asking  
19 is, at what point do you say stop and then go to  
20 license this and they're -- do they start up again  
21 after the license is granted, and then they can  
22 continue to evolve the design again?

23 MR. REAMER: Okay. The -- what we -- our  
24 position today is -- the staff's position today is  
25 that the Department of Energy needs to propose a

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1 specific design. If there's going to be a license  
2 application, the license application has to include a  
3 specific design, one design.

4 Now, our regulations, the proposed  
5 regulations, recognize that as -- if there were a  
6 repository constructed, that new information might  
7 cause the Department of Energy to want to change the  
8 design.

9 The proposed regulation has a process that  
10 they would need to complete before they could make  
11 that change in the design. The gist of the process is  
12 any change that raises a safety issue, a new safety  
13 issue, would have to be brought back to the Nuclear  
14 Regulatory Commission to look at and review. That's  
15 in the proposed regulation.

16 MR. CAMERON: Okay. Dennis and we're back  
17 up here. We'll come back up here.

18 MR. BECHTEL: Dennis Bechtel.

19 MR. DAMBLY: Be kinder and gentler.

20 MR. BECHTEL: Yes, right. A couple of  
21 LSN-related questions. Could you clarify -- it says  
22 "substantial and timely compliance with electronic  
23 availability requirements." I guess maybe  
24 availability is throwing me off here. You have it in  
25 slide 34.

1 MR. DAMBLY: Well, what that means is  
2 those dates that we had up where DOE certifies six  
3 months in advance, and then one month after they do  
4 the NRC does it, and three months after they do it  
5 potential parties do it, what it means is the  
6 documents that you plan to use need to be up and  
7 online as part of the licensing support network  
8 reasonably close to that 90-day period.

9 MR. BECHTEL: So the basis for our  
10 contention is going to be part of the LSN -- I mean,  
11 part of your consideration of

12 MR. DAMBLY: Yes. Documents that you know  
13 that you would use to support a contention need to be  
14 in the LSN.

15 MR. BECHTEL: And what you're involved  
16 in --

17 MR. DAMBLY: As you get them, you add  
18 them.

19 MR. BECHTEL: And even -- should a hearing  
20 or something begin --

21 MR. DAMBLY: Even at a hearing, if you get  
22 something at a hearing, you have to make it  
23 electronically available before you can use it, unless  
24 it's a last second kind of thing. But yes, I mean,  
25 but you can't come in at a hearing and say, "I'm going

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1 to use this document I've had for the past five years,  
2 but I'm just doing it now." That might pose a  
3 problem.

4 MR. CAMERON: Okay. Thank you.

5 Want equal time?

6 MR. CHANDLER: Can I just add one point to  
7 that?

8 MR. CAMERON: Yes. Go ahead.

9 MR. CHANDLER: Susi, regarding training--  
10 I know that the regulation provides that each  
11 potential party interested governmental participant  
12 or party shall provide training to its staff under the  
13 procedures of implementation of the responsibility to  
14 provide electronic files and documentary evidence.

15 So each participant in the process will  
16 have to undertake some training.

17 MR. CAMERON: And just let me say from  
18 last night's meeting as one of the points that we took  
19 out of there is that we were going to try to provide  
20 a better explanation and understanding on the LSN  
21 rules, and we'll explore how to do that.

22 AUDIENCE MEMBER: Are we going to get a  
23 hard copy?

24 MR. HARNEY: This is Corbin Harney again  
25 asking you the same question over and over. The

1 Shoshoni people wants to know what kind of answer you  
2 are going to give, because they are the legal owner of  
3 the land under the treaty. You guys are talking about  
4 somebody else's property here. That's where you're  
5 going to put that nuclear waste is Yucca Mountain, and  
6 the test site belongs to the Western Shoshonis.

7 MR. CAMERON: Okay. Thank you. We do  
8 need to be out of here soon. I don't know if we're  
9 going to have time for refreshments, but at least we  
10 can take a couple of questions here, and then we'll  
11 close up and maybe we can do that.

12 Steve?

13 MR. FRISHMAN: This is Steve Frishman  
14 again. I just have a very short comment, and that's  
15 to -- in spite of all we've heard last night and today  
16 about how the rule is not final, and we can't know  
17 what's in it, I want to thank Bill and you, Janet,  
18 personally for enlightening us on at least two things  
19 that are in the proposed rule, in your answer to  
20 Corbin and your answer to Jim. So now we know two  
21 things.

22 I just wanted to say this -- to point out  
23 how ridiculous this situation is, that we're talking  
24 about licensing, we're talking about regulating for  
25 safety, and the rule isn't fair because of the legal

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1 system.

2 We can't know what's in the rule. But at  
3 the same time, we see situations nearly every day now  
4 where the NRC -- or the DOE is asserting that it is  
5 doing everything that meets the proposed Part 63 rule.  
6 And the NRC staff is sitting there deciding whether it  
7 does or not, and we're the only ones in the dark.

8 The proposed rule is not a final rule.  
9 How many times did Bill tell me that? So I just want  
10 to thank you for doing this for us, and also just to  
11 let you know the ridiculous situation that we're in  
12 and that the NRC is exacerbating.

13 MR. REAMER: Steve, thank you. I respect  
14 your views, but I think you have created kind of an  
15 unnecessary confusion here. When I refer to the  
16 proposed rule, and Janet refers to the proposed rule,  
17 we're talking about what was published in the Federal  
18 Register in 1999 in February. And the State of Nevada  
19 knows the content of that rule, and the State of  
20 Nevada filed comments on it. And that's what we're  
21 referring to.

22 AUDIENCE MEMBER: How can you be sure  
23 that's the rule?

24 MR. CAMERON: Okay. I don't know if we're  
25 going to get too far with this. We do need to close

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1 up.

2 I wanted to give an opportunity to people  
3 who have not asked a question tonight. Is there  
4 anybody who has a question on what we've been talking  
5 about that hasn't spoken? All right.

6 MR. MCGOWAN: I would like to have an  
7 opportunity to footnote what --

8 MR. CAMERON: How many seconds?

9 MR. MCGOWAN: Ten.

10 MR. CAMERON: Okay.

11 MR. MCGOWAN: You have the right to remain  
12 silent. Tom McGowan is my name, in case any of you  
13 have not recalled that previous experience.

14 In summary, and I mean this with no  
15 disrespect, but in total deference to your position,  
16 you're between a rock and a hard place. Some may say  
17 a hard place and a welded chuck. You're between the  
18 public and your masters, but you're one in the same.

19 And the point I make is this: whether you  
20 realize it or not, whether you're willing to accept  
21 the responsibility of it or not, there is a moral  
22 imperative far and beyond all of this legal minutia,  
23 which is very fascinating, but, as we know, goes  
24 practically nowhere. Sooner or later somebody is  
25 going to yell out, "Check, please," because it does

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1       become a little bit inconclusive after about several  
2       hours.

3               But this is what is important and is  
4       invaluable and irrefutable. The generic you -- you  
5       are engaged in a conspiracy to commit mass genocide on  
6       the historically unprecedented scale, somewhat a  
7       universal scale.

8               It's actually a fact that radionuclides  
9       will outlive you, me, every known material, at any  
10      repository. It is direct injection into the human  
11      system. Your prodigies will be affected by it. It  
12      will impact humans and other organic species and  
13      facilitators ...

14              (Laughter.)

15              -- and ultimately will be potentially  
16      causal of the extinction of human consciousness  
17      itself. Go home and explain to your grandchildren  
18      what it is you're doing. You're not here hosting some  
19      kind of a social gathering. What you're doing has  
20      major significance and poses a serious consequence  
21      upon all of mankind. Go home and tell them that. Be  
22      sure they know your name.

23              MR. CAMERON: Thank you, Mr. McGowan.

24              Any final questions? There is a feedback  
25      form, a so-called feedback form. It's an evaluation

1 form of the meeting to help the NRC improve on these  
2 types of meetings. So we'd like to have your  
3 comments, both pro and con, if you could take a couple  
4 of minutes to fill it out. It's right over there on  
5 the table.

6 I just thank you for being here, and we  
7 hope we provided some useful information to you today.  
8 Thank you very much.

9 (Whereupon, at 4:35 p.m., the proceedings  
10 in the foregoing matter were adjourned.)  
11  
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CERTIFICATE

This is to certify that the attached proceedings  
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